NOVA SCOTIA
PUBLIC
PROSECUTION
SERVICE

CROWN ATTORNEY MANUAL

(UPDATED JUNE 1, 2004)

The policy documents in this Manual are intended to assist prosecutors in Nova Scotia in the exercise of their discretion. They do not create any rights and they do not have the force of law. The policy documents are reproduced here so that the public will be more fully aware of the principles which underlie the many decisions made by prosecutors in dealing with criminal matters.

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Prosecution Policies

Note: Certain words and phrases in these policies have the meanings established in the "WORDS & PHRASES" section of this part of the Manual. These policies are to be read in the context provided by the PREFACE to this part of the Manual.

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Public Prosecution Service

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PROSECUTION POLICIES (Policies which guide prosecutors in the exercise of discretion in prosecuting criminal cases)

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NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

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PREFACE TO PART I – POLICIES GUIDING THE EXERCISE OF DISCRETION

Purpose of This Part of the Crown Attorney Manual

This part of the Crown Attorney Manual includes directives and policies of the Public Prosecution Service which relate to decision-making by Crown Attorneys in the course of prosecuting criminal cases. The policies and directives are, in essence, the instructions of the Attorney General to his agents, the Crown Attorneys. Cumulatively, they are the principle device through which the Attorney General strives to achieve the level of consistency necessary to ensure fair and equal treatment of all citizens involved in prosecutions or affected by prosecutions.

This part of the Manual serves two main purposes. First, it is a convenient vehicle through which to distribute and consolidate the policies which have been developed for the guidance of prosecutors. It helps to ensure that the current policies are readily available to the Crown Attorneys who must utilize them on a daily basis.

A second purpose of this part of the Manual is to enhance transparency in the decision making process. Accused persons, victims and the public are entitled to be informed in regard to the basis upon which important decisions in the criminal process are made. Such transparency instills public confidence in the administration of justice and fosters respect for the decision makers.

There is, to some degree, statutory recognition of this need for transparency. The Public Prosecutions Act requires that certain directives of the Attorney General and the Director of Public Prosecutions be published. It is anticipated that the broad distribution of this part of the Manual will help meet that statutory obligation and also go beyond what is required by law. Generally, protocols and procedures developed to meet recurring issues in the criminal process will also be made public.

The Context in Which Policies are Presented

The directives and policies contained in this part of the Manual do not purport to cover all aspects of the criminal process. Some issues are not addressed at all; other issues are more comprehensively covered. Even where a policy has been drafted to give relatively complete guidance in regard to a particular sort of decision, it is impossible to anticipate the infinite variety of circumstances in which criminal cases arise. There will often be a gap, sometimes slim and sometimes broad, between the ambit of the policies and the reality encountered by prosecutors. Accordingly, it is essential that readers and users of this part of the Manual understand and remember the context in which these policies are presented. This requires an appreciation of where Crown Attorneys fit into the criminal process, and an understanding of the fundamental role of a Crown Attorney, particularly as described by leading jurists. It also involves a recognition that the courts have placed certain limitations on the scope of directives which can be issued to Crown Attorneys. Most importantly, it involves an appreciation of the spirit in which the directives and policies are issued and this will emerge, hopefully, from a holistic reading of this Preface and the policies themselves.

The Authority to Prosecute

The Attorney General of Nova Scotia is the law officer of the Crown in Nova Scotia and under our constitutional legislation is responsible for ensuring that the criminal law is enforced in a "just and proper manner" in Nova Scotia. The Attorney General is specifically included in the definition of "prosecutor" in the Criminal Code, and this definition is adopted in the Summary Proceedings Act and other provincial legislation. Even where, as in the Criminal Code, it is possible in certain circumstances for others to fall within the definition of "prosecutor", the law is now settled that the Attorney General can intervene as prosecutor in any prosecution at any time.

It is, of course, impossible for the Attorney General to appear personally in all prosecutions or to have direct involvement in all prosecution decisions across the province. The appointment of counsel to appear as agents of the Attorney General is a practical necessity. The Crown Attorneys fulfill this need. The authority of these agents to prosecute flows through the Attorney General and is not detached from the authority given to the Attorney General.

Independence

It is a well established legal principal that the Attorney General as prosecutor is to act independently of political influence. This issue has been the subject of extensive discussion by learned authors and much judicial comment. Typical of the judicial comments are those of Henry, J. in the 1976 case, R. v. Harrigan and Graham 33C.R.N.S.60 (Ont.H.C.), at p.62:

> "In the discharge of his responsibility for the enforcement of the criminal law in a just and proper manner (and I speak of the Attorney General of Canada acting in the federal field as well as the Attorneys General of the provinces) he has the final authority to decide whether or not a prosecution for an indictable offence shall proceed. He also has the ultimate authority to enter a stay of proceedings (nolle prosequi) where a prosecution for an indictable offence has been launched.....In exercising both these powers, which vitally concern the rights and liberty of the individual, he must take into account not only the interests of the individual but also what the public interest requires. In so doing he makes his decision alone. This is particularly true of the power of prosecution. He is not to be instructed by the government as to the action he should take. There is no restraint upon him (other than such as may be found in the statutes) except his final accountability to Parliament or the Legislature. In him is vested the responsibility for ensuring that the power of prosecution is not abused. The ultimate control on the Attorney General in the exercise of this power and duty

> to prosecute lies in the democratic processes of Parliament. It goes without saying that he must discharge his responsibility honestly, fairly, and in the public interest in a way that will stand scrutiny in the House of Commons or the Legislature."

In Nova Scotia, by virtue of the Public Prosecutions Act, this important principle of political independence is facilitated and preserved. The Act gives the Director of Public Prosecutions a general authority to conduct all prosecutions independently of the Attorney General. This minimizes the allegations of political interference which may arise when a member of government is involved in a prosecution.

The principle of political independence, however, continues to exist apart from the legislation and it connotes more than freedom from interference by politicians. As the Honourable Fred Kaufman noted in his 1999 Review of the Nova Scotia Public Prosecution Service:

> "First and foremost, there must be freedom from direction, control or influence by politicians and others exercising actual or perceived political authority. Second, there must be protection from actual or attempted direction, control or influence from other sources, such as the public, the media and special interest groups, which might impair or diminish the DPP's ability to freely exercise his or her judgment." [Review, p.15]

This principle of independence extends to all agents of the Attorney General. It requires that all decisions made by Crown Attorneys be made in the public interest and free from improper influences, whether or not there is a specific policy or directive requiring consideration of the public interest.

The Duty of Fairness

The previously noted comments of Henry, J. include a reference to the duty of the Attorney General to prosecute fairly. More frequently cited is the following dictum of Rand, J. in Boucher v. The Queen (1954), 110C,C.C. 263 (S.C.C.), at p.270:

> "It cannot be over-emphasized that the purpose of a criminal prosecution is not to obtain a conviction; it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof of the facts is presented: it should be done firmly and pressed to its legitimate strength but it must also be done fairly. The role of prosecutor excludes any notion of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings."

This fundamental aspect of the role of a Crown Attorney is well known and well respected by prosecutors. It should also be noted that Crown Attorneys in Nova Scotia are bound by the

Legal Ethics and Professional Conduct regimen of the Nova Scotia Barristers' Society which specifically adopts the language of Rand, J. in Boucher. The dictum is reproduced here primarily for the benefit of those less familiar with the criminal process.

The duty to act fairly and to seek a just result in judicial proceedings does not diminish the ability of a Crown Attorney to be a vigorous advocate. In that regard, a further comment from the Supreme Court of Canada in R. v. Cook (1997) 114 C.C.C.(3d) 481, per L'Heureux-Dube, J., at p. 489, is instructive:

> "[W]hile it is without question that the Crown performs a special function in ensuring that justice is served and cannot adopt a purely adversarial role towards the defence, [cites omitted] it is well recognized that the adversarial process is an important part of our judicial system and an accepted tool in our search for truth... Nor should it be assumed that the Crown cannot act as a strong advocate within this adversarial process. In that regard, it is both permissible and desirable that it vigorously pursue a legitimate result to the best of its ability. Indeed, this is a critical element of this country's criminal law mechanism: [cites omitted]. In this sense, within the boundaries outlined above, the Crown must be allowed to perform the function with which it has been entrusted; discretion in pursuing justice remains an important part of that function."

Accountability

In the present context, "accountability" refers to the obligation of an individual or agency to be answerable for fulfilling responsibilities that flow from the authority given to that individual or agency. Historically, provincial Attorneys General have been accountable to the electorate and have had to answer in legislatures for all decisions relating to the administration of justice, including the decisions made by their agents. This is confirmed and clarified in the Public Prosecutions Act of Nova Scotia which specifically states that the Attorney General is accountable to the Assembly for all prosecutions.

It has been noted earlier in this Preface that it is the Director of Public Prosecutions who actually conducts prosecutions and oversees criminal prosecutions in Nova Scotia. Just as it would be impossible for the Attorney General to be aware at all times of the countless decisions for which he is accountable to the Assembly, so to is it unrealistic to expect the Director of Public Prosecutions to be personally involved in the many thousands of cases which arise across the province each year. For that reason, in addition to the accountability inherent in any principal-agent relationship, there is a continuum of accountability extending from the Director of Public Prosecutions to the individual Crown Attorneys who make the prosecution decisions on a day to day basis. The accountability relationship is also confirmed in the job descriptions for each member of the Public Prosecution Service.

It should also be noted that all prosecuting agents of the Attorney General and the Director of Public Prosecutions are included in the accountability regime. Whether appearing pursuant to a full-time appointment, a short term contract or as an occasional per diem prosecutor, all prosecutors are accountable. They are all obliged to make decisions in accordance with stated directives and policies (with which they are assumed to be familiar), and they must otherwise act with the integrity and sense of fairness required of Crown Attorneys.

The process of accountability involves the establishment of certain expectations, and some degree of control. The prosecution policies issued by the Attorney General and the Director of Public Prosecutions play an integral role in outlining what is expected of Crown Attorneys. They also, of course, promote the consistency in decision making necessary to ensure fair and equal treatment of all citizens.

As indicated at the beginning of this Preface, the degree of control which the Attorney General and/or Director exert through directives and policies does not reach all corners of prosecution activity. The Public Prosecution Service accepts the suggestion stated in the 1993 Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions (Ontario) –the "Martin Report", that policies and directives which bind the discretion of Crown Attorneys in the conduct of a case should be "few and far between". That Report noted that it was important to preserve a certain degree of relatively unfettered discretion for Crown Attorneys for two reasons:

> "First, in the Committee's view, comprehensive prosecutorial discretion is necessary to appropriately respond to the infinite variety of circumstances that may lead to an allegation of criminal wrongdoing. For example, in any class of cases in which a charge of break and enter is laid, the needs of the community, the victim, the witnesses, and the accused may vary so greatly that the charge laid is the only feature common to those cases. Only a broad discretion as to how those cases are to be prosecuted or resolved will adequately address such important and extensive differences. Second, comprehensive prosecutorial discretion is, in the Committee's view, necessary to preserve and perpetuate sensitivity in the administration of criminal justice to unique local conditions, local practices, and local needs." [p. 40]

This position is consistent with the comment made by LaForest, J. in Regina v. Beare (1989), 45 C.C.C.(3d) 57 (S.C.C.), at p. 76, that "a system that attempted to eliminate discretion would be unworkably complex and rigid." The fact that a generous amount of discretion is left in the hands of Crown Attorneys, however, does not detract from the proposition that Crown Attorneys are fully accountable for their decisions. In the absence of specific policies, the expectations and guidance in regard to decision making are to be found in the more general judicial comments and policy statements which describe the role of the Crown Attorney and which demand an extremely high standard of integrity from all counsel conducting a criminal case.

The fact that Crown Attorneys are accountable to their superiors for the exercise of discretion in the criminal process and that there is an expectation of compliance with policy directions should not cause Crown Attorneys to be fearful of making difficult decisions. Only a small number of policies eliminate options or demand consultation with a superior before decisions are made. The vast majority of decisions which are left to Crown Attorneys envisage a range of options. A common challenge for a prosecutor is to select from those options the one, which, in the prosecutor's assessment of the public interest at the time that a decision must be made, is most responsive to the circumstances at hand. It is clearly understood at all levels of the Public Prosecution Service that the exercise of judgment in the criminal process is not an exact science. Reasonable, competent people often disagree. Frequently, there is no single "right" answer. When the balancing of competing factors is precarious, inexperienced counsel are encouraged to consult with supervisors and other experienced counsel in order to arrive at an appropriate decision. Similarly, when there is uncertainty in regard to what should be done in the absence of specific guidance in the manual, the fullest possible discussion of the issues with supervisors and colleagues is strongly encouraged.

It is important for counsel to be aware that to neglect or to avoid making a necessary decision can be more harmful to the administration of justice and the public interest than actually making a decision that, in retrospect, is challenged.

Just as the failure to exercise available discretion can be destructive, so too would be the blind, unthinking application of stated policies. Prosecuting, even by experienced counsel, requires careful analysis of issues, and consultation. Crown policies are not designed to be "automatic" decision makers or to be a substitute for judgment. The criminal law requires that people be treated as individuals in unique situations, and policies are not intended to distort this approach. There cannot, for instance, be a single approach prescribed in advance for a class of persons. Prosecuting counsel must carefully consider criminal cases, one at a time, and the particular nuances of each case must be reflected in the decision making process.

Because the very idea of discretion implies that a range of reasonable options exists, Crown Attorneys are entitled to assume that their decisions will be supported by their supervisors whenever the decision that is made falls within the range of reasonable options. It is clearly recognized that the effective functioning of the criminal justice system depends on flexible decision making at the local level.

The need for Crown Attorneys to exercise judgment is continuous - it does not arise only at isolated points in the prosecution process. Once a decision has been made, for example, to go forward with a prosecution, the prosecutor must continuously assess the viability of the case having regard to the evidentiary threshold and the public interest considerations.

Crown Attorneys must also be mindful of their role in relation to the police. In the vast majority of cases processed in Nova Scotia, the police gather evidence and determine whether or not reasonable grounds exist to lay a charge. They usually do this entirely without the involvement of Crown Attorneys. The police may seek the advice of the Crown
where they think it appropriate to do so, but they are not bound to follow that advice in regard to the conduct of investigations and the laying of charges. The Crown likewise exercises independent judgment in prosecuting and has no obligation to prosecute simply because a charge is laid by the police. As noted in the Martin Report and by the Marshall Commission, this separation of power, and the insertion of a level of independent review between the

investigation and any prosecution that may ensue, helps to ensure that both investigations and prosecutions are conducted more thoroughly and thus more fairly. This observation emphasizes the need for Crown Attorneys to actively use their best judgment at all times.

Words & Phrases

The following words and phrases appear in the directives, guidelines and policies, and have these meanings:

"shall" or "must": signify an unconditional requirement and usually relate to a legal obligation or procedural necessity. These are few in number.

"must seek approval from the Chief Crown Attorney [or other designated person]": signifies that the action or decision requires supervisory approval.

> **"Approval" means prior consent where possible, and "*ex post facto*" reporting of the decision where it was not possible to obtain prior consent.** The requirement for approval from a supervisor is rare and applies only to decisions which usually can be approved in advance. The requirement for prior approval is not attached to decisions that counsel make with great frequency. Prior approval may be required on more rare and serious discretionary decisions which have a permanent impact on the course of a particularly serious charge, e.g. reducing murder to manslaughter. It may also be required where the decision has widespread legal implications, e.g. conceding an appeal.

"must, absent exceptional circumstances,": signals to counsel the fact that the policy very strongly leans toward the suggested course of action since experience has shown that the public interest is rarely better served by departing from the stated policy. Nonetheless, this definition allows for some discretion, taking into account the unique circumstances which may arise in individual cases.

> **"Exceptional circumstances"** is a concept which is difficult to define in absolute terms. "Exceptional circumstances" are circumstances where public safety or the overall public interest is demonstrably better served by a deviation from the policy (expediency never constitutes an exceptional circumstance). Whenever prosecutors deviate from a policy for "exceptional circumstances" the reason for doing so should be stated in court, unless confidentiality is necessary. Prosecutors must make a note to file setting out the exceptional circumstances.

"should": indicates that there is a presumption that prosecutors will carry out the task, but recognizes that it may not always be possible or desirable to do so in the particular circumstances of an individual case. Prosecutors must be able to articulate a reasonable basis for departing from the suggested course of action.

"may": highlights an issue for prosecutors and alerts them to an action or decision which they may or may not take in the exercise of their discretion.

"CORE" POLICIES

Among the policies applicable to all prosecutions, certain "core" policies tend to have a major impact on the course of a prosecution, or upon the very existence of a prosecution. The policy entitled **The Decision to Prosecute** establishes, *inter alia*, the evidential threshold for prosecutions in Nova Scotia and is thus the principal "charge screening" document. This policy statement responds to the Beveridge-Duncan Report* which recommended in March, 2000 that the PPS formulate "a clear statement of principle with respect to the sufficiency of evidence standard to be applied by the Crown", and further that the PPS formulate "guidelines with respect to the appropriate application of the sufficiency of evidence test". Accordingly, the present policy differs significantly from its predecessor and provides increased assistance in regard to application of the policy.

The current standard, particularly that there be a "realistic prospect of conviction", is explained, at length, in **The Decision to Prosecute** document. This threshold, as recommended by the Law Reform Commission of Canada, lies within the notional gap between a *primae facie* case and a 51% likelihood of conviction. The word "reasonable" does not appear in the current statement of the evidential threshold, Management Committee being of the view that the word "realistic" more accurately describes the concept being established in the policy. The present language also helps to distinguish the Nova Scotia approach from that used in some other jurisdictions which utilize a "reasonable prospect of conviction" threshold and require prosecutors to determine that there is a 51% likelihood of conviction before a charge can proceed.

The public interest considerations, which continue to be an integral part of the charge screening process, are similar to those which were included in previous versions of the policy, but they are discussed more fully in the current policy.

The policy document entitled **Resolution Discussions and Agreements** replaces the previous, outdated, policy document relating to "plea bargaining". The new policy document recognizes that informed discussions and agreements between the counsel involved in a criminal prosecution are a legitimate and necessary part of a modern criminal justice system. This policy document tends to reflect current practices and, hopefully, establishes principles which will assist prosecutors and which will provide necessary transparency.

The policy entitled **Staying Proceedings and Recommencing Proceedings** is an entirely fresh document for the PPS and it is intended to establish consistency in the approach taken by prosecutors when a stay of proceedings is being considered. This document gives tacit approval to the proposition that the power to direct a stay of proceedings is an incidental component of the general authority given to the prosecutor conducting a criminal prosecution. [See Regina v. McKay (1970), 9 C.R. (3d) 378, (Sask. C.A.)].

The **Disclosure** policy is largely unchanged, but reflects current trends in the law. Undoubtedly, this policy will be revised and expanded as new dicta emerge from the courts, particularly in regard to such matters as cybercrime, privacy, and privilege.

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*Part of the **Report on the Review of the NSPPS** by the Hon. Fred Kaufman, Q.C., 2002

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

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(CHARGE SCREENING)

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THIS POLICY DOCUMENT IS TO BE READ IN THE CONTEXT PROVIDED BY THE **PREFACE** TO THIS PART OF THE MANUAL.

CERTAIN WORDS AND PHRASES HAVE THE MEANINGS ESTABLISHED IN THE **"WORDS & PHRASES"** SECTION OF THIS PART OF THE MANUAL.

THE DECISION TO PROSECUTE

Introduction

The decision to prosecute or to discontinue a prosecution is the most important decision that a prosecutor makes in the criminal justice process. Such decisions must reflect sound knowledge of the law and careful consideration of the interests of victims, the accused and the public at large. Prosecutions which are not well founded in law or fact, or which do not serve the public interest, may unfairly expose citizens to the anxiety, expense and embarrassment of a trial. The failure to effectively prosecute guilty parties can directly impact public safety. Wrong decisions tend to undermine the confidence of the community in the criminal justice system.

Like all decisions by prosecutors, the decisions to prosecute must demonstrate fairness and consistency. A prosecutor may be fair without being weak; a prosecutor may be consistent without being rigid. The criteria for the exercise of this important discretion cannot be drafted in language resembling a mathematical formula; indeed, it would be undesirable to attempt to do so. A broad range of factors comes into play and general principles must be tailored to meet individual cases. In the past several decades, prosecution services in Canada and in other common law jurisdictions have endeavored to state the general principles which guide this important discretion. This is an essential but difficult task. A perfect criminal justice system would ensure the conviction of every guilty party and would preclude the prosecution of every innocent party. History has demonstrated that such perfection is not attainable. As noted by the 1981 Royal Commission (United Kingdom) on Criminal Procedure,

> " The proper objective of a fair prosecution system is not therefore simply to prosecute the guilty and avoid prosecuting the innocent. It is rather to ensure that prosecutions are initiated only in those cases in which there is adequate evidence and where prosecution is justified in the public interest."
>
> Cmnd 8092, Report p. 127

From this observation, it is apparent that proper, practicable guidelines must deal with the evidential threshold for prosecutions, and the public interest.

In Nova Scotia, the initial assessment of a case by prosecutors focuses on the evidential threshold i.e. the issue of whether or not there is sufficient evidence to commence or continue criminal proceedings. If the evidential threshold is met, the prosecutor goes on to consider whether or not the public interest is best served by prosecution of the case.

A. The Evidential Threshold

In Nova Scotia, a prosecution will go forward only where the prosecutor is satisfied that, if the case proceeds to trial before an objective trier of fact, the evidence provides **a realistic prospect of conviction**.

Preliminary Matters

A number of preliminary matters relating to a charge must be addressed before the evidential threshold test is applied:

1. there must be no jurisdictional barrier to prosecution; and
2. the Information must be properly sworn before a justice i.e. the informant must act without improper motives and believe, on reasonable grounds, that the described offence has been committed by the identifiable person referred to in the Information.

In Nova Scotia, prosecutors generally do not become involved in prosecutions prior to the initiation of the prosecution by the informant, usually a peace officer. In most cases, a determination that "reasonable grounds" exist for the laying of a charge is made independently of any assessment of the evidence by a prosecutor. [This is in contrast to the approach taken in British Columbia, Quebec, and New Brunswick where there are processes involving pre-charge evidential review and charge approval by prosecutors]. Accordingly, the usual decision to be made by a prosecutor in Nova Scotia is whether to continue or to terminate proceedings. The evidential threshold for prosecutors in making this decision differs significantly from that which may be utilized in the laying of a charge.

In certain cases, investigators may find it useful to consult with a prosecutor prior to the initiation of a prosecution. When this occurs, it is appropriate for the prosecutor to give legal advice in regard to such matters as the admissibility of proposed evidence, the elements of particular offences, the propriety of investigative techniques, and criminal procedure. The prosecutor may also offer an opinion as to whether or not the available evidence as described by the investigator is capable of providing reasonable grounds for a belief that a suspect has committed an offence. It must be emphasized, however, that it is the belief of the investigator and not the prosecutor that is crucial to the laying of an Information. It is the investigator who decides whether or not charges are to be laid. For that reason, in these circumstances it would be prudent for the prosecutor to refrain from expressing a personal opinion as to the guilt or innocence of the suspect.

A realistic prospect of conviction

Assuming that the preliminary issues are resolved, the prosecutor exercising discretion to prosecute must consider the prospects of conviction. The decision in regard the existence of a realistic prospect of conviction requires an evaluation of how strong the case is likely to be when presented in court. The prosecutor is required to find that a conviction is more than technically or theoretically available – the prospect of displacing the presumption of innocence must be real. More than a prima facie case is required. As pointed out by the Law Reform Commission of Canada, it would be wrong to clog the courts with prosecutions that an experienced prosecutor fully expects to fail, simply because a prima facie case exists [see L.R.C.C., Working Paper #62 ("Controlling Criminal Prosecutions..."), at p.81].

The extent to which the evidence must exceed what is necessary for a prima facie case cannot be expressed in mathematical terms and the concept cannot be applied with scientific precision. There are, however, some indicators as to where the evidentiary threshold lies.

First, it must be noted that even when a prima facie case exists, a conviction will be set aside by an appellate court, pursuant to section 686 of the *Criminal Code*, if there is not sufficient, reliable evidence with probative value to satisfy the court that any conviction based on the evidence was reasonable. This may require something well beyond a prima facie case, and all cases which are prosecuted are expected pass this hurdle. However, many of the cases which, in retrospect, may satisfy section 686 do not provide prosecutors assessing the case in advance of a trial with a realistic prospect of conviction. To routinely pursue such cases would be wasteful of resources and would heighten the possibility of convicting an innocent person.

It is recognized that even the most experienced prosecutors may have great difficulty in assessing the strength of a case, particularly when only a summary of the evidence is available. Nevertheless, prosecutors are often able to conclude that an acquittal is clearly more likely than a conviction. This leads to the second indicator of where the appropriate threshold lies: **if, having regard to the amount and nature of the evidence, the prosecutor concludes that an acquittal is clearly more likely than a conviction, the case should not be prosecuted**.

The cases in which there is a realistic prospect of conviction will, of course, include those cases in which the prosecutor determines that a conviction is more likely than not to occur. Also included may be that relatively small number of cases that are "borderline" -- cases in regard to which the prosecutor, after reviewing the evidence in the manner described below, is not able to determine whether or not a conviction or an acquittal is more likely. This might occur, for instance, where the prosecution case is essentially sound, but there are flaws, the impact of which is difficult to assess. Other cases may have strong and weak aspects that are so closely balanced that the outcome cannot be predicted with confidence. Prosecutors should consult with supervisors and experienced colleagues in regard to the decision to prosecute such cases (the need for consultation is discussed more fully below).

Most of the cases presented to prosecutors are strong; indeed, most charges are resolved by a guilty plea. This, however, does not diminish the need for prosecutors to scrutinize every case. That small minority of cases in which the evidence clearly will not provide a realistic prospect of proving guilt beyond a reasonable doubt must be identified as early as possible. Because of the lack of precision inherent in the case review process, however, prosecutors cannot, and should not, attempt to eliminate from prosecution all cases wherein a conviction may not occur. It is not always necessary for the prosecutor to conclude that a conviction is more likely than an acquittal in order to proceed. What the prosecutor must find is that there is a realistic prospect of conviction.

Assessing the strength of the case

In reviewing a case to determine whether or not there is sufficient evidence upon which to found a prosecution, the prosecutor must lean towards the admissibility of evidence when the matter is not clear. For example, a statement obtained from the accused may involve an apparent breach of the Charter. If the breach is blatant, the assessment of sufficiency of evidence should proceed on the basis that the Crown cannot use the statement as part of the case. On the other hand, if there is an arguable case in favour of admissibility, the appropriate course would be to assume that the statement would not be ruled inadmissible.

A limited consideration of defences may also be part of the case assessment. The prosecutor should have regard to any defences which are plainly open to the accused, or which have come to the attention of the prosecutor. If, for example, there is unimpeachable evidence that the accused was in jail at the time of the offence and thus has available the defence of alibi, there would not be a realistic prospect of conviction. It is not necessary for the prosecutor to endeavour to anticipate and consider every possible defence, or to accept at face value all information provided by the accused. While the prosecutor must consider both the inculpatory evidence and the exculpatory evidence, the prosecutor may disregard information that he or she has good reason to believe is not reliable.

The prosecutor must consider only the evidence known to be available at the time that the case is being assessed. It would be wrong to base an assessment of the strength of the case on information that investigators hope to uncover in the future, or which might emerge from the accused on the witness stand, depending upon how the trial unfolds.

When the proposed evidence appears to be voluminous or complex, or the applicable law complicated, prosecutors should assume that a jury will understand the evidence and any instructions which will be given on the law. Prosecutors must also guard against having their decisions in regard to the strength of a case or the prospects of conviction hinge upon dubious generalities such as "juries always believe children" or "juries never convict police officers".

When the strength or weakness of case is not obvious, the prosecutor must be prepared to look beneath the surface of the statements made by witnesses. In doing so, it is not intended that the prosecutor usurp the role of the court. Assessments of the credibility or capacity of a witness must be based on objective indicators e.g. incontrovertible evidence that a witness is mistaken or lying. Assessments of the more nebulous matters such as demeanor, or whether evidence has "the ring of truth", must be left to the trial court.

A proper assessment of the strength of the case may involve such questions as these:

(a) Are there grounds for believing that some evidence may be excluded?

(b) If the case depends in part on admissions by the accused, are there any grounds for believing that they are of doubtful reliability having regard to the age, intelligence and apparent understanding of the accused?

(c) Does it appear that a witness is exaggerating, or that his or her memory is faulty, or that the witness is either hostile or friendly to the accused, or may be otherwise unreliable?

(d) Has a witness a motive for telling less than the whole truth?

(e) Are there matters which might properly be put to a witness by the defence to attack his or her credibility?

(f) Based on objective indicators, what sort of impression is the witness likely to make?

(g) How is the witness likely to stand up to cross-examination?

(h) If there is conflict between eye witnesses, does it go beyond what one would expect and hence materially weaken the case?

(i) If there is a lack of conflict between eye witnesses, is there anything which causes suspicion that a false story may have been concocted?

(j) Are all the necessary witnesses competent to give evidence?

(k) Where child witnesses are involved, are they likely to be able to give sworn evidence or to give evidence based upon a promise to tell the truth?

(l) If identity is likely to be an issue, how cogent and reliable is the evidence of those who purport to identify the accused?

(m) Where two or more accused are charged together, is there a reasonable prospect of the proceedings being severed? If so, is there sufficient evidence against each accused should separate trials be ordered?

The decision to prosecute or discontinue is particularly difficult in those cases in which the accused flatly denies the allegations and the case for the Crown consists of the uncorroborated evidence of a single witness. It would be wrong for the prosecutor to automatically reject such a case as not providing a realistic prospect of conviction. If, for instance, the single witness had a good opportunity to observe the events, was able to give a detailed account without unexplainable inconsistencies, had no history of dishonesty or motive to lie, and was not improperly influenced by third parties, it might be open to the prosecutor to conclude that the anticipated evidence provided a realistic prospect of conviction. On the other hand, if it is clear, based upon objective indicators within the case, that a reasonable doubt could not be eliminated, then the prosecutor would properly conclude that there was no realistic prospect of conviction. This is the sort of case in which consultation with supervisors and experienced colleagues is recommended (see below).

Occasionally, there are cases in which witnesses conflict, but the variance is not related to any human frailty and will not be resolved through close questioning or assessment of demeanor or personal characteristics. In regard to particular scientific issues, for instance, there may be genuine uncertainty within the scientific community. This will be highly significant when a crucial element in the case for the Crown must be proved by opinion evidence. If several well qualified experts present unequivocal, conflicting opinions based upon identical premises, and the opinions are all prepared with a high degree of professionalism, the prosecutor will probably be obliged to conclude that there is no realistic prospect of eliminating a reasonable doubt. Again, consultation is strongly recommended in such cases. The mere existence of a conflict between experts should not automatically cause a case to be discontinued. Careful assessment of the nature of the conflict and its impact on the case is required.

B. The Public Interest

In Nova Scotia, once it has been determined that there is sufficient evidence to provide a realistic prospect of conviction (as described above), the prosecutor must then determine whether the public interest is best served by prosecution of the case. It has, never been a rule of prosecution policy in Canada, England or elsewhere in British Commonwealth that all criminal cases which could be prosecuted must be prosecuted. There would be a public outcry, if, for instance, prosecution resources were expended in prosecuting a theft case in which it was alleged, based on circumstantial evidence, that the accused had entered an orchard two years ago and picked an apple without the owner's permission. On the other hand, if the accused had been caught red-handed, yesterday, by apple growers concerned with widespread damage to orchards by intruders, prosecution might be appropriate. The proper administration of criminal justice requires that the consideration of the public interest in prosecuting a case be carried out on a consistent, principled basis.

Considering the public interest factors

Every criminal case is unique. The factors which can properly be taken into account, and the importance of particular factors in deciding whether the public interest requires a prosecution, will vary from case to case.

Some of the factors which it is proper to consider are these:

(a) the gravity, or, conversely, the triviality of the alleged incident or that it is of a 'technical' nature only (generally, the more grave the incident, the more likely that the public interest will require prosecution);

(b) the age, intelligence, physical health, mental health or special infirmity of the alleged offender, a witness or victim;

(c) the staleness of the alleged offence;

(d) the degree of culpability of the alleged offender in connection with the offence (particularly in relation to any other alleged parties to the offence);

(e) the obsolescence or obscurity of the law;

(f) whether the prosecution would be perceived as counter-productive, for example, by bringing the law into disrepute;

(g) the availability and efficacy of any alternatives to prosecution;
(h) the prevalence of the alleged offence and the need for general deterrence;

(i) whether the consequences of any resulting conviction would be unduly harsh and oppressive;

(j) any entitlement of people or agencies to compensation, reparation or forfeiture if prosecution action is taken;

(k) the attitude of the victim of the alleged offence to a prosecution;

(l) the likely length and expense of a trial;

(m) whether the alleged offender is willing to co-operate in the investigation or prosecution of others, or the extent to which the alleged offender has done so;

(n) the likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court;

(o) the necessity to maintain public confidence in Parliament, the Legislature and the administration of justice.

Within the list of factors noted above, the determination of the gravity of an incident may require additional guidance. Certain types of offences are dealt with separately at other points in the Crown Attorney Manual and the comments within specific policies should be noted. Generally, the more grave the incident, the more likely that the public interest will require prosecution. The presence of one or more of the following elements (the list is not exhaustive) will add to the gravity of the incident:

- the perpetrators used a weapon, violence or threats of violence;
- the victim was a judicial official, peace officer, or someone preserving public safety;
- the criminal activity was directed at the administration of justice;
- the incident involved premeditation or planning;
- the offence was carried out by a gang or group organized for that purpose;
- the matter involved the corruption of an official;
- the alleged offender was subject to court supervision at the time of the incident;
- the incident was part of a pattern of criminal behaviour, or behaviour likely to be repeated by the offender.

The public interest factors should be looked at as a whole, but it is possible for one factor to outweigh all others.

It is also possible for certain factors, e.g. "the staleness of the offence" or "the likely length and expense of a trial", to gain or lose significance with the strength or weakness of the prosecution case. If, for instance, the evidence in a complex fraud prosecution barely rises above the evidential threshold, the fact that the case would consume months of court time and would require monumental prosecution resources might lead the prosecutor to conclude, on balance, that the public interest would not be well served by prosecution of the case.

The following factors are to be excluded from consideration in determining whether the public interest is best served by a prosecution:

(a) the alleged offender's race, religion, sex, national origin, or political associations;

(b) personal feelings concerning the victim or the alleged offender;

(c) any partisan political advantage or disadvantage which might flow from the decision to undertake or stop a prosecution; or

(d) the possible effect on the personal or professional circumstances of those responsible for the charging decision.

Crown Attorneys are reminded that they have an important role to play in providing a level of independent review between police investigations and any prosecution that may flow from those investigations. This has been emphasized in the Marshall Inquiry, the Martin Report, and elsewhere. Accordingly, Crown Attorneys have a duty to conduct a careful, principled review of every prosecution brief to ensure that the established threshold is met.

The assessment by a prosecutor of both the strength of a case and the public interest must be carried out with integrity and a high level of professionalism. Courage is also required: the appropriate decision may not be the decision desired by investigators or interested parties. Prosecutors must continuously bear in mind their proper relationship to the police, witnesses, the courts, and the general public as they make these decisions.

The decisions to be made by a prosecutor in regard to prosecuting or discontinuing a prosecution are often difficult and many decisions can safely be made only after careful analysis and consultation, as noted below. The responsible, dispassionate application of the stated tests, however, is the best way to minimize the risk of prosecuting innocent persons and to effectively utilize finite justice resources. Declining to exercise this important discretion is likely to be just as destructive to the administration of justice as making inappropriate decisions.

Choice of Charges

In many cases, the available evidence will support an offence outlined in more than one section of the Criminal Code, or in more than one statute. Prosecutors are then faced with the related decision as to which charge should be the subject of criminal proceedings. The fundamental guiding principle on this issue is that the charge or charges selected must adequately reflect the nature and extent of the criminal conduct disclosed by the evidence and provide the court with a proper foundation for sentence.

The following considerations should guide the choice of charges:

- Ordinarily, the charge or charges to be pursued would be the most serious disclosed by the evidence. It may be appropriate to pursue a charge which is not the most serious revealed by the evidence when it is apparent from the outset that the usual length of trial or the usual range of penalty for a particular type of charge is out of proportion to the gravity of the alleged criminal conduct.

- Although in most criminal cases there is an expectation of plea and charge negotiation, it is not appropriate to recommend serious charges with the primary intention of providing scope for subsequent plea negotiation.

- Generally, where the available evidence will support charges under specific federal or provincial legislation designed to address a particular type of conduct, consideration should first be given to proceeding under that specific legislation rather than under the broad provisions of the Criminal Code. If proceedings under the specific legislation would not adequately reflect the nature of the criminal conduct disclosed by the evidence or not provide an adequate penalty, then Criminal Code charges are preferable. For example, the taking of a car by a young adult may be "joyriding" or "theft over". If the car was recovered undamaged after a short ride, "joyriding" is probably the appropriate charge. More serious facts or a local need for general deterrence might make "theft over" appropriate. The assessment, however, should begin with reference to the more specific charge.

- Crown Attorneys should exercise restraint in recommending conspiracy charges. When there is little or no evidence other than the commission of substantive offences to support the conspiracy charge, strong preference should be given to the pursuit of substantive charges only. When consideration is being given to pursuing conspiracy charges against a number of accused persons jointly, the risk of a joint trial being unduly complex or unfair to some of the accused, must be carefully considered.

Continuous Process

Once a decision has been made to prosecute a charge, that decision must be continuously reviewed as new information is received. There are some procedural landmarks which naturally tend to prompt a review e.g. the end of a preliminary inquiry, but this is not a structured review process–it may occur at any time. The "new information" may include fresh appreciation of existing information, as might occur after witnesses give *viva voce* evidence or if anticipated information does not materialize. If, at any time, a prosecutor concludes that a realistic prospect of conviction no longer exists, or that prosecution is not in the public interest, steps should be taken to discontinue the prosecution as soon as is practicable.

Consultation/Accountability

Just as reasonable, competent people can disagree on whether evidence can provide a realistic prospect of conviction, so too is there a possibility that differing opinions will arise in regard to the need to prosecute or discontinue the case in the public interest. This is frequently a difficult decision and, as has been noted earlier, the guidance available to prosecutors is necessarily given in general terms with room for adaptability to the actual circumstances encountered by prosecutors. In this decision making process, the experience of other counsel is a valuable resource that should be readily utilized. The Law Reform Commission of Canada has noted that the criminal justice system should not be deprived of this experience in regard to prosecutorial decisions. Prosecutors who are faced with difficult decisions concerning the sufficiency of evidence or the public interest are strongly urged to consult with supervisors and experienced colleagues. The need to consult will vary to some extent with the type of case, the experience of the persons involved, and the opportunities for consultation.

The nature of the consultation that should occur will also vary with each case. When the decision to be made in regard to the prosecution of a charge is clear, the consultation will mostly involve the prosecutor keeping the supervisor informed of developments. When the factors to be considered are more finely balanced, there is likely to be a fuller discussion, an exchange of views, and perhaps the giving of advice or instructions. A more formal case conference may be convened by the Chief Crown Attorney for complex, significant cases.

Crown Attorneys who consult with supervisors and colleagues when faced with difficult decisions, and then exercise discretion in a principled way, will be supported in their decision-making.

It is not possible to prepare an exhaustive list of cases and situations which should or must involve consultation and team work. Without limiting the general need for consultation in regard to significant and difficult decisions, the following principles are applicable to consultation in regard to the decision to prosecute cases:

(1) Prosecutors **must** consult with their supervisors in regard to the decision to prosecute (or to discontinue prosecution) in any case involving:

  (a) a death, or

  (b) charges against public figures or persons involved in the administration of justice.

(2) Prosecutors **should** consult with their supervisors in regard to the decision to prosecute (or to discontinue prosecution) of the following types of cases:

  (a) criminal conduct involving gang or group activity;

  (b) cases expanding the use of particular Criminal Code provisions, or which raise novel issues relating aboriginal rights or any other legislation, including the Charter; and

  (c) cases which have attracted media attention, or which will likely be of public interest when presented in court.

(3) Prosecutors are strongly encouraged to consult with supervisors and experienced colleagues in regard to the decision to prosecute all other significant or unusual cases.

The determination of whether a case is significant requires judgment by the prosecutor involved. If a penitentiary sentence appears to be appropriate for the criminal conduct, that is a strong indicator that the matter is significant enough to involve consultation. Cases with multiple victims, large losses of property, or which involve criminal activity at several locations are other examples of cases often considered to be significant.

(4) Prosecutors are strongly encouraged to consult with supervisors and experienced colleagues before deciding to prosecute any case in which they are unsure of either the strength of the case or whether the evidential threshold is met.

The PPS recognizes the need to leave generous amounts of discretion in the hands of local prosecutors (see the Preface to this manual). Occasionally, however, the DPP, in fulfilling his responsibilities in regard to accountability, may become directly involved in the decisions arising in extraordinary cases, or may designate senior counsel to consider particular issues. This approach often flows from a need to have decisions of province-wide impact made by those with a province-wide mandate, or the necessity of bringing maximum prosecutorial experience to bear on certain difficult decisions. Such involvement in local decisions will be rare, but it is a necessary phenomenon in any organization with an accountability structure and does not reflect any lack of confidence in local prosecutors.

Crown Attorneys are reminded of the ongoing need to complete Case Bulletins in appropriate cases and to update these Bulletins as cases move forward (see the separate administrative policy re Case Bulletins)

Transparency

Generally, prosecutors should make a note in the prosecution file of any consultations which have occurred in regard to the decision to prosecute or to discontinue a case. A note should also be made of public interest considerations which influenced the decision, unless they are obvious. It is particularly important that careful notes be maintained concerning the decisions made in the cases wherein consultation is required pursuant to other provisions of this policy statement on the decision to prosecute.

The decision to discontinue a prosecution after a charge has been laid raises additional considerations. If a charge involves an identifiable victim, the prosecutor has a duty to ensure that the victim is made aware of the rationale for the decision, preferably before any public revelation of the decision is made (a withdrawal or the entering of a stay in court amounts to a public announcement of the decision). The greater the degree of threat, injury or financial loss to the victim, the greater the obligation on the prosecutor to keep the victim informed.

Where circumstances permit, prosecutors should also discuss with the investigating police officers the reasons for not continuing with a charge. It is possible that a case can be strengthened after first presented to the prosecutor, and, where practical to do so, this opportunity should be provided. In appropriate cases, the prosecutor can direct additional investigation. If the investigation has been extensive and complete, and the case is not being prosecuted for public interest reasons, the prosecutor should still discuss the decision with investigators prior to announcement of the decision.

In some cases, it is appropriate to place on the record in court brief reasons why a prosecution is being discontinued. This is particularly true when a case has attracted public attention, or there has been a committal for trial. In putting reasons on the public record, or in making a public statement, the prosecutor must be careful not to embarrass the accused or witnesses by disclosing information that will otherwise not be made public. Usually, a simple statement referring to public interest factors will suffice.

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RESOLUTION DISCUSSIONS AND AGREEMENTS

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THIS POLICY DOCUMENT IS TO BE READ IN THE CONTEXT PROVIDED BY THE **PREFACE** TO THIS PART OF THE MANUAL.

CERTAIN WORDS AND PHRASES HAVE THE MEANINGS ESTABLISHED IN THE **"WORDS & PHRASES"** SECTION OF THIS PART OF THE MANUAL.

RESOLUTION DISCUSSIONS AND AGREEMENTS

Discussions between counsel aimed at resolving the issues that arise in a criminal prosecution are an essential part of the criminal justice system in Nova Scotia. When properly conducted, these "resolution discussions" benefit the accused, victims, witnesses and the general public. In an environment of comprehensive and early disclosure of evidence, counsel can often resolve issues of procedure, plea, fact and sentence to such an extent that running a case through the full criminal process would add little to what counsel achieve informally. Resolution discussions can also facilitate prompt, just disposition of cases in a manner more sensitive to the circumstances of the participants than would be possible in a formal trial e.g. the privacy of a shy witness can be protected.

The proper administration of criminal justice requires effective participation by Crown Attorneys in resolution discussions. These guidelines are intended to clarify the issues which counsel may attempt to resolve, and to help ensure consistency in approach.

General Principles

1. Any issue that arises in a criminal prosecution may be the subject of discussion and agreement between counsel.

   This broad statement of principle is, of course, subject to the limitations established elsewhere in the Crown Attorney Manual, the rules of criminal law and procedure, and the general rules of conduct applicable to all barristers.

   Crown Attorneys, assuming that they are properly prepared, are encouraged to participate in resolution discussions and to pursue the resolution of issues. It is appropriate for Crown Attorneys to initiate resolution discussions, particularly in the early stages of a criminal case.

2. Any resolution discussion pertaining to any aspect of a criminal prosecution must lead only to agreements that are a responsible representation of the public interest in the enforcement of criminal law. Each case must be resolved on its merits in a manner that is fit and just.

   Some of the public interest factors which it is appropriate to consider in regard to resolution agreements are these:

   - the history of the accused with respect to criminal activity
   - the nature and gravity of the offences faced by the accused
   - the remorse of the accused and willingness to assume responsibility
   - the desirability of prompt and certain disposition of the case
   - the likelihood of obtaining a conviction at trial
   - the wishes of victims, and the probable effect of a trial on witnesses
   - the probable sentence or consequences if the accused is convicted.

3. It is not appropriate for Crown Attorneys to take a position in resolution discussions based solely on expediency. Crown Attorneys, however, must consider all of the circumstances of the case, which in some instances may include the need to make effective use of limited resources. For example, if Crown and defence counsel are not far apart in their perceptions of what the sentence should be in the event of a guilty plea, Crown counsel can properly consider whether the public interest is best served by conducting a lengthy trial for nothing more than an opportunity to seek a slightly increased penalty.

4. Crown Attorneys must endeavour to ensure that resolution discussions are consistent from case to case where appropriate. Through their counsel, accused persons in comparable situations must be afforded both comparable opportunities to engage in resolution discussions and comparable treatment during those discussions.

5. Counsel must honour all agreements reached after resolution discussions.

   Repudiation of a resolution agreement can occur only if (1) the agreement would bring the administration of justice into disrepute, and (2) the accused can be restored to his or her original position. Any contemplated repudiation by a Crown Attorney must be approved by the Chief Crown Attorney for the region; any contemplated repudiation of an agreement made by a Chief Crown Attorney must be discussed with the Director of Public Prosecutions or his designate.

   Because the honouring of resolution agreements is a practical necessity, Crown Attorneys are strongly encouraged to discuss difficult resolution proposals with supervisors and experienced colleagues prior to entering into an agreement.

   If a Crown Attorney disagrees with an agreement earlier reached by a colleague, the agreement should be carefully and respectfully discussed by the counsel involved. If the disagreement cannot be resolved, the supervisor should be consulted for direction. Unresolved disagreements of this nature should be rare.

6. Crown Attorneys must not purport to bind the discretion of the Attorney General or the Director of Public Prosecutions to appeal.

   It is understood, however, that dispositions flowing from a resolution agreement will only be the subject of an appeal or of a recommendation to appeal where, in the opinion of the DPP. the agreed outcome, if unaltered, would bring the administration of justice into disrepute.

7. When a matter is resolved as the result of discussions between counsel, generally this should be stated on the record in open court. The public interest may occasionally require departure from this principle e.g. when necessary to protect the safety of an informant.

Particular Discussions and Agreements

(a) Charge and Plea Discussions

Crown Attorneys may pursue resolution only of charges which meet the charging standard i.e. sufficient evidence must be available to provide a realistic prospect of establishing the guilt of the accused, and prosecution of the accused must be in the public interest (see DPP Guidelines re the Decision to Prosecute).

If, in the course of discussions, it becomes apparent that evidence necessary to prove a material element of the offence will never become available, this must be disclosed to defence counsel. Crown attorneys are not required to warrant the availability of every witness. As a matter of practice, however, in order to ensure that no one is mislead, it would be prudent for a Crown Attorney to inform the accused or defence counsel of the unavailability of an essential witness if this is known to the Crown Attorney before or during plea discussions.

Crown Attorneys must not enter into a guilty plea agreement to a charge in regard to which the accused claims to be innocent.

In discussing charges, Crown Attorneys must ensure that

(1) the charges to be proceeded with bear a reasonable relationship to the nature of the criminal conduct of the accused, and

(2) the charges proceeded with provide adequate parameters for an appropriate sentence in all the circumstances of the case.

The following matters, and others, may be included in charge discussions:

- withdrawing charges;
- agreeing not to proceed against certain accused persons;
- combining separate charges into one all-inclusive charge;
- proceeding on only certain counts against one accused and withdrawing other counts against that accused.

Crown Attorneys should, where reasonably possible, consult with victims and the investigators in regard to resolution of charges and sentence. If a resolution agreement is reached, counsel should ensure that victims and the investigators understand the substance of the agreement and the rationale for the agreement.

(b) Procedural Discussions

It is appropriate for Crown Attorneys to discuss the following procedural matters:

- whether to proceed summarily or by indictment;
- specifying a future date for disposition of the case, assuming that this is being done for legitimate reasons and the accused is prepared to waive the right to a trial within a reasonable time;
- transferring charges to or from another jurisdiction.

(c) Sentence Discussions

Because a public perception that resolution agreements result in sentences that are unacceptably low can undermine public confidence in the justice system, discussions and agreements in regard to sentence must achieve a sentence which is proportionate to the nature of the criminal conduct of the accused.

It is appropriate for Crown Attorneys to discuss the following matters which relate to sentence:

- the specific sentence or range of sentence to be recommended by the Crown;
- a joint recommendation for a specific sentence or a range of sentence;
- an agreement by the Crown not to oppose a sentence recommendation by defence counsel which has been disclosed in advance (subject to the specific requirements of other policies e.g. spousal violence);
- conditions to be included in conditional sentences, probation orders, and other orders made at the time of sentencing (but not orders under the DNA Identification Act).

In sentence discussions, it is appropriate for Crown Attorneys to acknowledge that a plea of guilty is a circumstance in mitigation of sentence. When there is sincere remorse and the guilty plea is offered at the first reasonable opportunity, it is particularly mitigating. At the early stages of the criminal process, Crown Attorneys should give full and appropriate credit for a guilty plea. When resolution discussions occur at a later stage in the criminal process, particularly when a guilty plea is offered only after ascertaining that all essential evidence has been assembled at court, significantly less credit should be given.

(d) Discussions in Regard to the Facts of the Case

When the accused pleads guilty, Crown Attorneys should put before the court those facts that could have been proved by admissible evidence if the matter went to trial. Ideally, there should be a detailed, agreed statement of facts.

It is appropriate for Crown Attorneys to omit embarrassing facts which are of little or no significance to the charge. It is not acceptable, however, for Crown Attorneys to participate in the presentation of a set of facts which misleads the court. Crown Attorneys must not withhold from the court facts that are relevant, provable and which aggravate the offence. Similarly, Crown Attorneys must not agree to omit a relevant, provable part of the criminal record of the accused.

With respect to cases which proceed to trial, it is appropriate for Crown Attorneys to pursue discussions with defence counsel with a view to resolving issues of fact. If issues cannot be resolved, it is appropriate to pursue discussions with a view to minimizing the number of witnesses which will be necessary and to arrange to present the case in a manner that is convenient to the witnesses. The use of alternatives to *viva voce* evidence e.g. affidavits, certificates, photographs, documents, etc. should be considered and discussed.

Consultation/Accountability

The resolution of cases and issues is often a difficult process and it is impossible to prepare precise instructions for prosecutors which predict and address the nuances of every case. The guidance available to prosecutors is necessarily given in general terms with room for adaptability to the actual circumstances with which the prosecutors are faced. This is a process, however, in which experience can be truly valuable. The Law Reform Commission of Canada and the Martin Report have observed that the criminal justice system should not be deprived of this experience in regard to prosecutorial decisions. Continuous consultation between prosecutors, supervisors, and experienced colleagues in regard to the resolution of cases helps to ensure consistency in approach, permits the sharing of knowledge and information, and enhances the professional development of prosecutors.

It is not possible (and probably not desirable) to prepare an exhaustive list of cases and situations which should or must involve consultation and team work. The need to consult will vary to some extent with the type of case, the experience of the persons involved, and the opportunities for consultation. Without limiting the general need for consultation in regard to significant and difficult decisions, the following principles are applicable to consultation in regard to the resolution of cases:

(1) Prosecutors **must** consult with their supervisors in resolution discussions in any case involving:

    (a) a death, or

    (b) charges against public figures or persons involved in the administration of justice.

(2) Prosecutors **should** consult with their supervisors in regard to the resolution of the following types of cases:

   (a) criminal conduct involving gang or group activity;

   (b) cases expanding the use of particular Criminal Code provisions, or which raise novel issues relating to any legislation, including the Charter; and

   (c) cases which have attracted media attention, or which will likely be of public interest when presented in court.

(3) Prosecutors are strongly encouraged to consult with supervisors and experienced colleagues in regard to the resolution of all other significant or unusual cases. The determination of whether a case is significant requires judgment by the prosecutor involved. If a penitentiary sentence appears to be appropriate for the criminal conduct, that is a strong indicator that the matter is significant enough to involve consultation. Cases with multiple victims, large losses of property, or which involve criminal activity at several locations are other examples of cases often considered to be significant.

It should be noted that the nature of the consultation that should occur will vary with each case. When the decision to be made in regard to the resolution of a charge is clear, the consultation will mostly involve the prosecutor keeping the supervisor informed of developments. When the factors to be considered are more finely balanced, there is likely to be a fuller discussion, an exchange of views, and perhaps the giving of advice or instructions.

Crown Attorneys who consult with supervisors and colleagues when faced with difficult decisions, and then exercise discretion in a principled way, will be supported in their decision-making.

The PPS recognizes the need to leave generous amounts of discretion in the hands of local prosecutors (see the Preface to this manual). Occasionally, however, the DPP, in fulfilling his responsibilities in regard to accountability, may become directly involved in the decisions arising in extraordinary cases, or may designate senior counsel to consider particular issues. This approach often flows from a need to have decisions of province-wide impact made by those with a province-wide mandate, or the necessity of bringing maximum prosecutorial experience to bear on certain difficult decisions. Such involvement in local decisions will be rare, but it is a necessary phenomenon in any organization with an accountability structure and does not reflect any lack of confidence in local prosecutors.

Crown Attorneys are reminded of the ongoing need to complete Case Bulletins in appropriate cases and to update these Bulletins as cases move forward (see the separate administrative policy re Case Bulletins).

Transparency

It is important to maintain detailed records of resolution discussions and the rationale for agreements. In this way, "Crown-shopping" will be discouraged and continuity in approach will be maintained. Accurate records also enhance the ability of the PPS to provide appropriate information to the public and persons directly involved in a case, thus increasing confidence in the justice system.

In routine cases where the accused pleads guilty early in the criminal process and the prosecutor agrees to a sentence within the usual range for the offence charged, the position of the Crown and its rationale will usually be apparent from the in-court record. In all other instances, careful notes should be made in the prosecution file outlining any discussions which have occurred with defence counsel, any consultations with supervisors or colleagues, and the rationale for the position take by the prosecutor. This is particularly important when the prosecutor has taken an "unusual" position; the case is complex; the file is (or may be) passed on to another prosecutor; or the case is likely to attract public attention.

As noted earlier in these Guidelines (see General Principles, above), when a matter is resolved as a result of discussions between counsel, generally this fact should be stated on the record in open court.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

STAYING PROCEEDINGS AND RECOMMENCING STAYED PROCEEDINGS

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CERTAIN WORDS AND PHRASES HAVE THE MEANINGS ESTABLISHED IN THE **"WORDS & PHRASES"** SECTION OF THIS PART OF THE MANUAL.

STAYING PROCEEDINGS AND RECOMMENCING STAYED PROCEEDINGS

A) STAYING PROCEEDINGS - Section 579(1)

Subject to the provisions of this policy, the power of the Attorney General to direct a stay of proceedings as outlined in Section 579(1) of the Criminal Code has been delegated to all legal staff of the Public Prosecution Service.

The staying of proceedings is an administrative act involving a direction to the Clerk of the Court by the Attorney General or his agent. By their nature, stays are not subject to control by the courts (the recommencement of proceedings is another matter–see below). Because the Attorney General and his agents exercise their discretion to stay proceedings without judicial supervision or intervention, it is essential that decisions to stay proceedings be made on a principled basis and in a manner which serves the public interest.

Generally, a stay is appropriate when proceedings in regard to a charge are being discontinued and the public interest requires that the prosecutor retain the right to recommence those proceedings within one year (or within such shorter limitation period as may pertain to the charge).

The following are examples of instances in which it may be appropriate to utilize a stay:

(1) in connection with a program of alternative measures or other restorative justice program in which the accused requires time to complete his/her obligations under the program;

(2) when an essential witness does not attend court as required or instructed, and there are reasonable grounds to believe that the witness has been threatened, intimidated or improperly persuaded not to attend court, provided that the stay is entered before the court has ruled (or intimated) against an adjournment;

(3) an essential witness is unable to give evidence due to illness, trauma, injury, temporary mental impairment, or other non-permanent circumstance, and there are reasonable grounds to believe that the witness will be able to testify within one year (or within such other shorter limitation period as may pertain to the charge), provided that the stay is entered before the court has ruled (or intimated) against an adjournment;

(4) as part of a resolution agreement, where there is reason to believe that the withdrawal of a charge (or the offering of no evidence in regard to particular charge) may subsequently lead to a plea of *autrefois acquit* and thus frustrate the resolution agreement.

Note: In certain jurisdictions, when the prosecutor wishes to permanently terminate proceedings after a trial has begun, rather than seeking leave to withdraw the charge or inviting an acquittal, a practice has developed of entering a stay, accompanied by an undertaking on the record not to recommence proceedings. Although this practice is acceptable as a device to terminate proceedings, it lies outside the area of discretion covered by this policy.

Approval Required

(1) A stay should not be entered, absent exceptional circumstances, to circumvent a judicial ruling or to avoid an acquittal. [An example of exceptional circumstances may be found in Regina v. Scott (1990), 61 C.C.C. (3rd) 300 wherein a stay was entered in order to prevent the disclosure of the identity of a confidential informant.] If a stay is intended to circumvent a judicial ruling which has been delivered or intimated by the court, the prior approval of the Chief Crown Attorney is required. If a stay is intended to avoid an acquittal, the prior approval of the Director of Public Prosecutions, or his designate, is required.

(2) In regard to indictable offences (or hybrid offences prosecuted by indictable procedure), Crown Attorneys should not stay proceedings after the accused has pleaded not guilty without the prior approval of the Chief Crown Attorney accountable for the prosecution (unless the stated intention is to permanently terminate proceedings–see Note, above).

Transparency and Accountability

Unless the reason for entering a stay is apparent on the record, prosecutors should state in open court the reasons for entering a stay, except when this would involve disclosure of confidential information.

Any consultation which has occurred in regard to the entering of a stay should be noted in the prosecution file.

Except when a stay is entered in connection with an alternative measures program, prosecutors are required to notify the Chief Crown Attorney that a stay has been entered. This is to be done in writing as soon as is practicable after the stay has been entered, with a brief outline of the circumstances.

(B) RECOMMENCING STAYED PROCEEDINGS - Section 579(2)

The right of the Attorney General to re-commence proceedings pursuant to Section 579(2) has been delegated to **Chief Crown Attorneys**, except that:

(1) Crown Attorneys may recommence proceedings stayed in connection with an alternative measures program or other restorative justice program;

(2) Crown Attorneys may recommence summary procedure matters, except

  (a) where the stay required the prior approval of the Chief Crown Attorney, or

  (b) it is necessary to seek a warrant for the arrest of the accused on the stayed charge when notice of recommencement is delivered to the Clerk of the Court.

The recommencement of proceedings is often subject to scrutiny by the courts. It is important that the power to recommence proceedings be exercised judiciously. The following principles are to guide the exercise of this discretion:

> Proceedings stayed pursuant to Section 579(1) may be recommended within one year of the stay (or within such shorter limitation period as may pertain to the charge) if:

(1) it is in the public interest to recommence proceedings;

(2) recommencing proceedings would not be an abuse of process; and

(3) recommencing proceedings would not deprive the accused of any right, including the right to a trial within a reasonable time.

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Although the power to stay and recommence proceedings has been delegated to Crown Attorneys and Chief Crown Attorneys as set out in this policy, prosecutors are reminded of the need to consult with supervisors in appropriate cases, particularly as indicated in the PPS policy regarding the Decision to Prosecute and the policy regarding Resolution Discussions and Agreements.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

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DISCLOSURE BY THE CROWN IN CRIMINAL CASES

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CERTAIN WORDS AND PHRASES HAVE THE MEANINGS ESTABLISHED IN THE **"WORDS & PHRASES"** SECTION OF THIS PART OF THE MANUAL.

DISCLOSURE

1. STATEMENT OF PRINCIPLE

There is a duty on the Crown to make full and timely disclosure to the defence of all relevant[1] information known to the investigator and the Crown Attorney in Criminal Code prosecutions conducted by agents of the Attorney General. This obligation applies to both inculpatory and exculpatory information. In discharging this disclosure obligation, the Crown must respect the rules of privilege.

2. THE RATIONALE FOR DISCLOSURE

Disclosure by the Crown has three main purposes:

(a) to assist in guaranteeing the accused/defendant constitutional rights to a fair trial and to make full answer and defence;

(b) to resolve non-contentious and time consuming issues in advance of trial in an effort to ensure a more efficient use of court time and avoid unnecessary proceedings; and

(c) to encourage the resolution of cases including, where appropriate, the entering of guilty pleas or the withdrawal of charges at an early stage of the proceedings.

3. THE ROLE OF THE INVESTIGATOR

Effective disclosure by the Crown to the defence is dependent upon and requires full and timely disclosure by the investigator to the Crown Attorney. It is incumbent upon the investigator to be aware of the duty of the Crown to disclose all relevant factual information to the defence and to cooperate with the Crown Attorney in order that full and timely disclosure can be provided to the defence. The investigator must bring to the attention of the Crown Attorney confidentiality concerns of which the investigator is aware.

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[1] One measure of the relevance of information is its usefulness to the defence. If it is of some use, it is relevant and should be disclosed. Accordingly, information is relevant if it can reasonably be used by the defence either in meeting the case for the Crown, advancing a defence or otherwise in making a decision which may affect the conduct of the defence such as, for example, whether to call evidence [see R. v. Egger (1993), 82 C.C.C. (3d) 193 at 204 (S.C.C.)].

4. THE ROLE OF THE CROWN ATTORNEY

The Crown Attorney bears responsibility for the disclosure provided to the defence. While Crown Attorneys must err on the side of inclusion, they need not produce what is clearly irrelevant. The disclosure of relevant information is subject to a discretion with respect to the timing and manner of disclosure as outlined in Sections 7 and 8 below. Further, Crown Attorneys have a duty to respect the rules of privilege and to protect the identity of informers. All decisions by the Crown Attorney not to disclose on grounds of either privilege or relevance are reviewable by the trial judge. Where the defence requests access to material not in the possession of the investigator or Crown Attorney but in the possession of another agency, government department or other person, the defence should be advised that the request can be made directly to the relevant agency, government department or other person.

5. WHAT MUST BE DISCLOSED

As soon as practicable upon request, the Crown Attorney will make available to the defence the following material:

(a) a copy of, or an opportunity to copy, the information or indictment;

(b) a copy of, or an opportunity to copy, a summary of the case, detailing the circumstances of the offence, prepared by the investigating agency;

(c) a copy of, or an opportunity to copy, all written statements in the possession of the Crown made by the accused/defendant and in the case of verbal statements, a verbatim account of the statement or copies of notes or an audio or video recording of the statement whether favourable to the accused/defendant or not;

(d) a copy of, or an opportunity to copy, the criminal record[2] of the accused/defendant and the particulars (offence, date and disposition) of any other criminal record relied on by the Crown;

(e) copies of, or an opportunity to copy, all written statements made by persons who have provided relevant information to the investigator (where individuals have provided more than one statement a copy, or an opportunity to copy, all statements will be provided). In the case of verbal statements, the investigators' notes or, where there are no notes, a summary prepared by the investigating agency of the relevant information and the name, address and occupation of the person;

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[2] "Criminal record" means the C.P.I.C. CNI Want/Record.

(f) where feasible, a copy of any audio or video recording of a witness' statement (if production of a copy of the recording is not feasible, an opportunity to listen to an audio recording or view a video recording, in private, shall be provided);

Note: The privacy of vulnerable witnesses, particularly children and sexual assault victims, must be protected. Where a recording is made of the statement of a vulnerable witness, the provision of a copy of the recording should be subject to an undertaking by counsel for the defence that:

(i) no person other than an expert retained by the defence will be given possession of the recording;

(ii) no further copy of the recording will be made;

(iii) the copy will be viewed or heard only by persons involved in the defence of the accused; and

(iv) the copy will be returned to the Crown at the conclusion of the proceedings.

(g) subject to the provisions of the *Youth Criminal Justice Act*, particulars (offence, date and disposition) of the criminal record of an accomplice or an alleged accomplice, whether that person has been charged or not;

(h) subject to the provisions of the *Youth Criminal Justice Act*, particulars of any information known to the Crown which the defence may legally use to impeach the credibility of a Crown witness, including the criminal record of a Crown witness where the defence requests this information and the record is relevant to an issue in the case or has probative value with respect to the credibility of the witness;

(i) subject to the provisions of the *Youth Criminal Justice Act*, the criminal record of a potential defence witness where the defence requests this information;

(j) copies of, or an opportunity to copy, all medical, laboratory and other expert reports in the possession of the Crown which relate to the offence, except to the extent they may contain privileged information;

(k) access to any potential exhibits or other physical evidence in the possession of the Crown for the purpose of inspection, and, where applicable, copies of such exhibits [see Practice Note, below];

(l) a copy, or an opportunity to copy, of any search warrant and information to obtain relied on by the Crown;

(m) if intercepted private communications will be tendered, a copy of the judicial authorization under which the private communications were intercepted; access to the log book of interceptions; access to audio recordings made pursuant to the authorization; and a copy of the transcript of the interceptions made pursuant to the authorization when it is available;

(n) a copy of, or an opportunity to copy, any other document, or portion of a document contained in the investigation file and any notes of the investigator which contain the factual observations of investigators pertaining to the investigation of the alleged offence; and

(o) notice of any evidence which has become lost or destroyed and a summary of the circumstances surrounding such loss or destruction prepared by the investigating agency.

6. ADDITIONAL DISCLOSURE

It is not possible to anticipate the disclosure requirements in every potential case and disclosure additional to that outlined in section 5 above will sometimes be appropriate. The Crown Attorney has a discretion to make such additional disclosure consistent with the statement of principle and rationale for disclosure expressed above. For example, if information disclosing a violation of the rights of the accused/defendant under the Charter of Rights and Freedoms comes to the attention of the Crown Attorney, it must be disclosed to the defence. The Crown Attorney is not obliged by this directive to make pretrial disclosure of evidence only relevant in reply unless defence disclosure reveals the relevance of the evidence prior to trial. The obligation upon the Crown is a continuing one and relevant information coming to the attention of the investigator or Crown Attorney following initial disclosure must be disclosed in accordance with this directive. Even after conviction, including after any appeals have been decided or the time for appealing has lapsed, information coming to the attention of the investigator or Crown Attorney which shows an accused/defendant is innocent or which raises a doubt as to the guilt of the accused must be disclosed.

7. TIMING OF DISCLOSURE

The Crown is not obligated to provide any disclosure prior to a charge being laid. After a charge has been laid, initial disclosure should occur before the accused/defendant is called upon to elect the mode of trial or to plead. If the Crown intends to rely on the criminal record of the accused/defendant at a bail hearing, the criminal record information available to the Crown must be disclosed to the defence prior to the bail hearing. The Crown Attorney retains the discretion to delay disclosure where there is a legitimate concern for the safety or security of persons who supplied information or where early disclosure might impede the completion of an investigation (such situations should be rare).

8. LIMITING OR DELAYING DISCLOSURE

Disclosure may only be delayed or limited to the extent necessary:

(a) to comply with the rules of privilege, including informer identity privilege;

(b) to prevent the endangerment of the life or safety of witnesses, or their intimidation or harassment; or

(c) to prevent other interference with the administration of justice.

Where a Crown Attorney limits disclosure to comply with the rules of privilege, the Crown Attorney shall so advise the defence. A Crown Attorney who proposes not to disclose any of the items listed in section 5 above must obtain the prior written approval of the Chief Crown Attorney or other person designated by the Director of Public Prosecutions. Any decision by the Crown Attorney to delay or limit disclosure is reviewable by the trial Judge.

9. THE UNREPRESENTED ACCUSED/DEFENDANT

The judges of the Provincial Court have agreed that the judge presiding at the first appearance of an unrepresented accused/defendant will advise the accused/defendant of the right to obtain disclosure from the Crown Attorneys' office. A written notice to this effect will also be provided to the accused/defendant.

The judges of the Supreme Court have agreed that on first appearance in the Supreme Court a statement will be read to unrepresented accused advising them of the right to disclosure from the Crown. The Court will also request information from the Crown with respect to the status of Crown disclosure.

Practice Note* re video recordings and photographs:

Disclosure of video recordings or photographs which are the subject matter of the offence itself, e.g. videotapes which are alleged to be pornographic, is subject to these further restrictions:

(i) an unrepresented accused shall be given a reasonable opportunity to view the video recordings or photographs in private, in circumstances approved by the prosecutor, but the accused shall not be given a copy of such evidence; and

(ii) defence counsel shall be given a reasonable opportunity to view the video recordings or photographs in private. If defence counsel asserts that this opportunity does not provide adequate disclosure of such evidence, defence counsel should be given a copy of the video recordings or photographs, subject to the signing of an undertaking as outlined in paragraph 5 (f).

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* Practice Note approved by the DPP and PPS Management Committee August 8, 2002.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

ALTERNATIVE MEASURES - ADULT DIVERSION

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ALTERNATIVE MEASURES - ADULT DIVERSION

1. PROGRAM OBJECTIVE

1.1 The Adult Diversion Program is a post charge pre-trial option to the criminal justice system which offers to eligible accused persons, victims and the criminal justice system an opportunity to address and resolve in an efficient and responsible manner, the accused person's criminal behaviour with the least amount of formal court intervention. The Adult Diversion Program provides an option which is visible, accountable and accessible to accused persons, victims and the community while repairing, to the extent possible, the harm caused by the offence.

2. OPERATIONAL PRINCIPLES

2.1 The Adult Diversion Program is a program approved by the Attorney General for the Province of Nova Scotia, pursuant to s. 717 of the Criminal Code of Canada and is administered by the Department of Justice.

2.2 The Adult Diversion Program provides to those accused persons who are eligible, the opportunity to participate in a program of alternative measures, to be undertaken prior to the initiation of any formal Court proceedings.

2.3 Participation in the Adult Diversion Program will result in a formal agreement based on consensus between those parties involved in the diversion process which, once successfully completed, will terminate any further criminal proceedings in relation to the particular matter.

3. DEFINITIONS

3.1 **Adult Diversion Personnel:** means Probation Officers or other persons designated by Correctional Services, Department of Justice, with responsibility for operating the Adult Diversion Program.

3.2 **Accused:** means an adult individual alleged to have committed an offence for whom the Crown Attorney believes there is sufficient evidence to proceed with prosecution of the offence and that any such prosecution is not in any way barred at law.

3.3 **Assessment Interview:** means an interview between the accused and Adult Diversion personnel to determine the accused person's acceptance into the program, whether a mediation hearing will be held with the victim(s) and where appropriate, to reach a formal Adult Diversion Agreement.

3.4 **Mediation Hearing:** means a meeting between the victim(s) and the accused, facilitated by Adult Diversion personnel, where all parties agree to attempt to reach an acceptable solution and a formal Adult Diversion Agreement which will resolve or repair the harm caused by the offence.

4. ELIGIBILITY CRITERIA

4.1 Prior to an accused person becoming actively involved in the Adult Diversion Program, the following eligibility criteria must be considered and/or satisfied:

4.1.1 the decision to proceed by way of adult diversion is made having regard for the needs of the accused person, the victim and the interests of society;

4.1.2 there is sufficient evidence to proceed with the prosecution of the offence and any such prosecution is not in any way barred at law;

4.1.3 the accused person accepts responsibility for the act or omission that forms the basis of the offence which is alleged to have been committed;

4.1.4 the accused person, having been informed of adult diversion, fully and freely consents to participate in the program, having been given a reasonable opportunity to consult with counsel.

4.2 In addition, adult diversion shall not be considered where:

4.2.1 the accused person is on probation or is serving a custodial disposition;

4.2.2 the accused person has pending charges in addition to those being considered for adult diversion; except where the pending charges occurred after the matter being considered for adult diversion;

4.2.3 the accused person has a recent history (previous two years) of convictions for similar offences, five years where the previous convictions were for an offence under section 4.2.4 (conviction free periods date from the end of disposition), or has previously participated in a diversion program within the preceding two-year period;

4.2.4 the following offences or factors are involved:

4.2.4.1 serious violence against a person (where Crown elects to proceed by way of indictment);
4.2.4.2 use or threatened use of a weapon;
4.2.4.3 sexual offences (as contained in Parts V and VIII of the *Criminal Code*);
4.2.4.4 perjury;

4.2.4.5 criminal code driving offences; or
4.2.4.6 spousal/partner violence.

5. CASE REFERRAL/REVIEW

5.1 Cases will be referred directly from the Police, following their review of the circumstances of the case and consideration of the eligibility criteria for the Adult Diversion Program.

5.2 Once received and reviewed by Adult Diversion personnel, the case will be referred to the Crown Attorney for approval to proceed with the referral.

5.3 The Crown Attorney, in determining whether to grant approval to proceed, shall have regard to:

5.3.1 whether prosecution is in any way barred at law;
5.3.2 whether there is sufficient evidence to proceed with the prosecution of the offence;
5.3.3 whether there is a reasonable chance of conviction [see Practice Note, below]; and,
5.3.4 whether it is in the public interest that the prosecution proceed, having regard to the availability of adult diversion alternative measures, the nature of the offence(s) charged and the established eligibility criteria for the Adult Diversion Program.

6. ASSESSMENT INTERVIEW

6.1 Upon approval of the referral by the Crown Attorney, Adult Diversion personnel will establish contact with the accused person, informing them of the opportunity to participate in the Adult Diversion Program and of their right to retain and consult legal counsel.

6.2 Where the accused person agrees to participate in the program, Adult Diversion personnel will arrange and conduct an assessment interview to determine the person's acceptance into the program.

6.3 Prior to the assessment interview and where appropriate, contact will be established with the victim to determine the victim's interest in participating in mediation with the accused.

6.4 Where it is determined at the assessment interview that the accused is accepted for participation in the Adult Diversion Program and where the victim has agreed to participate, Adult Diversion personnel will arrange for a mediation hearing. Where the victim does not wish to participate, the matter will be resolved by means of a formal Adult Diversion Agreement established during the assessment interview.

7. ADULT DIVERSION AGREEMENT

7.1 Having been accepted for the Adult Diversion Program and following the assessment interview or mediation hearing, as appropriate, a formal Adult Diversion Agreement shall be entered into by the accused person.

7.2 The Adult Diversion Agreement shall specify the measures to be completed by the accused person, including an agreed upon date for completion.

8. RANGE OF ALTERNATIVE MEASURES

8.1 The range of measures which may be employed include the following:

8.1.1 community service;
8.1.2 restitution/financial compensation;
8.1.3 personal service for the victim;
8.1.4 specialized education programs;
8.1.5 referral for counselling/treatment assessment;
8.1.6 charitable donation;
8.1.7 letter of apology;
8.1.8 essay;
8.1.9 no further intervention; or,
8.1.10 other such reasonable measures as approved by the Department of Justice.

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AUTHORIZATION

This program of alternative measures was authorized by the Attorney General pursuant to Section 717 of the *Criminal Code* on December 30, 1996.

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PRACTICE NOTE:

In paragraph **5.3.3**, the words “reasonable chance of conviction” are to be interpreted in the same way as “realistic prospect of conviction”, the evidential threshold established in the Decision to Prosecute policy document

CRIMINAL CODE – Section 717

WHEN ALTERNATIVE MEASURES MAY BE USED/Restriction on use/ Admissions not admissible in evidence/ No bar to proceedings/ Laying of information, etc.

717. (1) Alternative measures may be used to deal with a person alleged to have committed an offence only if it is not inconsistent with the protection of society and the following conditions are met:

(a) the measures are part of a program of alternative measures authorized by the Attorney General or the Attorney General's delegate or authorized by a person, or a person within a class of persons, designated by the lieutenant governor in council of a province;

(b) the person who is considering whether to use the measures is satisfied that they would be appropriate, having regard to the needs of the person alleged to have committed the offence and the interests of society and of the victim;

(c) the person, having been informed of the alternative measures, fully and freely consents to participate therein;

(d) the person has, before consenting to participate in the alternative measures, been advised of the right to be represented by counsel;

(e) the person accepts responsibility for the act or omission that forms the basis of the offence that the person is alleged to have committed;

(f) there is, in the opinion of the Attorney General or the Attorney General's agent, sufficient evidence to proceed with the prosecution of the offence; and

(g) the prosecution of the offence is not in any way barred at law.

(2) Alternative measures shall not be used to deal with a person alleged to have committed an offence if the person

(a) denies participation or involvement in the commission of the offence; or

(b) expresses the wish to have any charge against the person dealt with by the court.

(3) No admission, confession or statement accepting responsibility for a given act or omission made by a person alleged to have committed an offence as a condition of the person being dealt with by alternative measures is admissible in

evidence against that person in any civil or criminal proceedings.

(4) The use of alternative measures in respect of a person alleged to have committed an offence is not a bar to proceedings against the person under this Act, but, if a charge is laid against that person in respect of that offence,

(a) where the court is satisfied on a balance of probabilities that the person has totally complied with the terms and conditions of the alternative measures, the court shall dismiss the charge; and

(b) where the court is satisfied on a balance of probabilities that the person has partially complied with the terms and conditions of the alternative measures, the court may dismiss the charge if, in the opinion of the court, the prosecution of the charge would be unfair, having regard to the circumstances and that person's performance with respect to the alternative measures.

(5) Subject to subsection (4), nothing in this section shall be construed as preventing any person from laying an information, obtaining the issue or confirmation of any process, or proceeding with the prosecution of any offence, in accordance with law.

RECORDS OF PERSONS DEALT WITH

717.1 Sections 717.2 to 717.4 apply only in respect of persons who have been dealt with by alternative measures, regardless of the degree of their compliance with the terms and conditions of the alternative measures.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

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ALTERNATIVE MEASURES - YOUNG OFFENDERS

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THE ROLE OF THE CROWN ATTORNEY

The role of the Crown Attorney in regard to Y.O.A. Alternative Measure Programs may be summarized as follows:

1. A police officer will make a recommendation for alternative measures in accordance with the eligibility criteria and complete the Recommendation form. He or she will then give the recommendation and information to the Crown Attorney who will then review the facts and determine whether or not there is sufficient evidence to proceed and whether or not the prosecution is in any way barred at law. If the Crown Attorney is satisfied, then the form is signed and forwarded to the Probation Office.

2. If the Crown Attorney is not satisfied or is of the view, for any reason, that the case is not appropriate for alternative measures, he or she should discuss the matter with the police officer who recommended alternative measures. If the matter is not resolved then the Crown Attorney should refer it to Head Office.

3. If the police do not recommend alternative measures and the Crown Attorney in reviewing the case feels that it should be refered to alternative measures, he or she should discuss the matter with the investigating officer. If the matter is not resolved then the Crown Attorney should refer it to Head Office.

4. Alternative measures are intended to be an alternative to judicial proceedings. If a particular case comes before the court, while the issue of whether or not alternative measures should be used is unresolved, the court proceeding should be adjourned without mentioning "Alternative Measures" to the judge. Instead, words such as "An adjournment would be in the best interest of the young offender." should be used. Once the charge is read and a plea is taken, alternative measures are not available.

ELIGIBILITY CRITERIA

1. The conditions which follow are a summary of the legislated criterial which must be considered and/or satisfied prior to any young person becoming actively involved in alternative measures:

   (a) the decision to proceed by way of alternative measures is made having regard to the needs of the young person and the interests of society;

   (b) there is sufficient evidence to proceed with the prosecution of the offence and any such prosecution is not in any way barred at law;

   (c) the young person accepts responsibility for the act or omission that forms the basis of the offence that he is alleged to have committed;

   (d) the young person, having been informed of the alternative measures, fully and freely consents to participate in the program, having been given a reasonable opportunity to consult with counsel.

2. In addition to those criteria which are presently legislated in the Y.O.A., alternative measures may be considered except where the following conditions exist:

   (a) the young person is on probation or is serving a custodial disposition;

   (b) the alleged offence is impaired driving or refusing a breathalyser;

   (c) the young person has pending charges in addition to those being considered for alternative measures*;

   (d) the young person has any prior criminal code or federal statute convictions or has previously participated in alternative measures within the preceding two-year period.

3. Alternative measures shall not normally be considered where the alleged offence is indictable and is one which involves violence, personal injury, weapons or a potentially dangerous situation.

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*A case arose where a young person was charged with "theft under" (shoplifting). A short time later, before the first charge was dealt with, she was charged with "theft under" in connection with a second shoplifting incident. Both charges, if considered separately, were eligible for alternative measures consideration. The issue that had to be resolved was whether the young person was precluded from alternative measures consideration because of the "pending charge". After consultation with the Director, Community Corrections, it was decided that since both charges would be brought before the court at the same time, the two charges were eligible for alternative measures consideration and could be referred to the alternative measures program together.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

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APPEALS TO THE COURT OF APPEAL

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CERTAIN WORDS AND PHRASES HAVE THE MEANINGS ESTABLISHED IN THE **"WORDS & PHRASES"** SECTION OF THIS PART OF THE MANUAL.

APPEALS TO THE COURT OF APPEAL
Under Part XXI of the Criminal Code

A. Statement of Principle

1. The paramount obligation on the Crown in an appeal under Part XXI of the **Criminal Code** is to present the Court of Appeal with all the facts and legal authorities the Crown considers relevant to the issues the court must decide.

2. The right of the Attorney General to appeal is to be exercised with restraint, in the public interest.

B. Appeal by the Attorney General Against Dismissal

1. The right of the Attorney General to appeal a dismissal can only be invoked if it is determined that the trial court:

   (a) erred in law,

   (b) erroneously refused or failed to exercise jurisdiction on an indictment, or

   (c) erroneously stayed proceedings on an indictment or erroneously quashed an indictment.

2. In addition, the right of the Attorney General to appeal against a judgment or verdict of acquittal can only be invoked if it is determined that the judgment or verdict would not necessarily have been the same if the error in law had not been made.

3. In determining whether to launch an appeal in those cases where the right of the Attorney General to appeal can be invoked, the Crown Attorney charged with the responsibility for making the decision whether to appeal shall consider:

   (a) the seriousness of the error of law made in the proceedings and its importance to the administration of justice;

   (b) the potential impact of the decision as a precedent in subsequent prosecutions;

   (c) whether the error of law, although not of general application, is determinative of a case that is so important that it is in the public interest that it be appealed;

(d) whether a decision not to appeal might bring the administration of justice into disrepute; and

(e) whether unusual and compelling circumstances exist requiring guidance from the Court of Appeal.

C. Appeals by the Attorney General Against Sentence

1. The right of the Attorney General to seek leave to appeal against sentence can only be invoked if it is determined that the sentence imposed by the trial court is unfit. In determining whether a sentence imposed by a trial court is unfit, the Crown Attorney charged with the responsibility for making the decision whether to seek leave to appeal shall consider:

   (a) whether the sentence is contrary to the **Criminal Code**;

   (b) whether the sentence reflects an error in principle;

   (c) whether the quantum of sentence is so low as to be manifestly inadequate;

   (d) whether unusual and compelling circumstances exist requiring sentencing guidance from the Court of Appeal; and

   (e) the position taken by the Crown in the trial court.

D. Crown Appeal Procedure

1. When the Crown Attorney with carriage of a trial prosecution concludes that the right of the Attorney General to appeal should be invoked the Crown Attorney shall make a written recommendation to the Chief Crown Attorney of the region in which the prosecution originated. If the Chief Crown Attorney for the region agrees with the recommendation, or concludes that the recommendation should be reviewed by the Appeals Branch, a **Recommendation for Appeal** (see Appendix "A") shall be fully completed and submitted to the Chief Crown Attorney (Appeals).

2. The Chief Crown Attorney (Appeals) may also receive recommendations from other sources that the right of the Attorney General to appeal be invoked.

3. Upon receipt of a **Recommendation for Appeal**, the Chief Crown Attorney (Appeals) shall notify the Director of Public Prosecutions of the recommendation in writing.

4. When the Appeals Branch has reached a decision whether or not to launch an appeal, the Chief Crown Attorney (Appeals) shall notify the Director of Public Prosecutions in writing.
5. If the regional Chief Crown Attorney who recommended the appeal is not satisfied with the decision of the Appeals Branch, the Director of Public Prosecutions shall review the decision.

6. The Chief Crown Attorney (Appeals), or a Crown Attorney in the Appeals Branch instructed by the Chief Crown Attorney (Appeals), may exercise the right of the Attorney General to appeal to the Court of Appeal.

E. Crown Representation in the Court of Appeal

1. Crown representation in the Court of Appeal on appeals under Part XXI of the **Criminal Code** is the responsibility of the Appeals Branch. Crown Attorneys who are not members of the Appeals Branch may, with the consent of the Chief Crown Attorney (Appeals), represent the Crown on an appeal under Part XXI of the **Criminal Code** before the Court of Appeal, but when doing so are accountable to the Chief Crown Attorney (Appeals).

F. Abandonment of Crown Appeals

1. The decision to appeal must be made on the basis of the best available material.

2. If the Crown Attorney with carriage of an appeal has concerns during preparation of the appeals as to whether the public interest will best be served by continuing the appeal, the Crown Attorney shall consult with the Chief Crown Attorney (Appeals) and the regional Chief Crown Attorney who recommended the appeal and decide whether the appeal should be abandoned.

3. Where the Chief Crown Attorney (Appeals) concludes that an appeal should be abandoned, the Director of Public Prosecutions shall be notified in writing of the reasons for the abandonment.

4. If the regional Chief Crown Attorney who recommended the appeal is not satisfied with the decision of the Appeals Branch to abandon the appeal, the Director of Public Prosecutions shall review the decision.

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PROSECUTION OF ASSAULT CHARGES - Section 266(b)

Although the provisions of section 266(b) of the Criminal Code are a necessary element in the preservation of public order, experience has shown that many occurrences involving assaultive behavior do not meet established charge screening standards. Accordingly, the Public Prosecution Service generally does not prosecute charges of simple assault.

In exercising discretion to prosecute, Crown Attorneys must determine whether or not there is a realistic prospect of conviction if a case proceeds to trial. This determination involves, in part, a preliminary assessment of the evidence available to prove the case. When events erupt quickly or the parties have pre-existing animosity and lack of objectivity, or the incident involves the consumption of alcohol, there is often too little reliable information to support a prosecution.

The assessment of the evidence may include such matters as these:

- the ability and opportunity of witnesses to observe and recall material facts;
- possible biases or self interest of the witnesses;
- the level of consistency or inconsistency among witnesses.

The Crown Attorney, in reviewing a charge to determine whether or not there is a realistic prospect of conviction, also takes into account any obvious defences legitimately available to the potential accused person. Many fact situations do not preclude the usual defences of self defence and consent. This eliminates numerous other charges from further consideration.

Even when a situation provides a realistic prospect of conviction, Crown Attorneys must go on to consider whether or not the public interest is best served by a prosecution. The factors to be considered in assessing the strength of the case and ascertaining the public interest in any particular case are numerous and variable. Some of the relevant factors which often arise in assault cases are these:

- the triviality or gravity of the incident (including the nature of the force applied, and any damage or injury sustained by a participant or bystander);

- the availability and efficacy of any alternatives to prosecution;

- whether or not there was an obvious physical disparity between the participants in the incident;

- whether or not the participants knew each other prior to the incident;

- the likelihood of a repetition of the assaultive behavior.

If, for example, there was pushing or even punching between two adults who were not strangers, and no injuries resulted, the Crown Attorney will often determine that it is not necessary to bring the full weight of the criminal process to bear upon the situation. Some neighborhood disputes, even when they escalate into physical contact, may be more effectively addressed by mediation rather than prosecution. Other minor disputes might lend themselves to resolution through peace bonds. Occasionally, a hand shake or apology will suffice.

On the other hand, when an incident gives rise to significant injuries, involves "bullying" behavior, or features an unprovoked assault upon a stranger or vulnerable victim, the public interest will usually call for a prosecution and the PPS will pursue such cases.

It should also be noted that the PPS has developed particular policies which address matters of domestic violence, all of which are considered to be serious.

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Just as Crown Attorneys have a discretion as to whether or not any criminal charge will result in a prosecution, the police have discretion as to whether or not a charge will be laid when there are reasonable grounds to believe that an offence has occurred. In Nova Scotia, this discretion of the police is usually exercised prior to any involvement by the PPS in a case. It is not within the mandate of the PPS to supervise the police in the exercise of this discretion. It might be noted, however, that in exercising this discretion, a peace officer may legitimately consider whether or not a charge will survive screening by a Crown Attorney. A peace officer, in the responsible exercise of discretion, may decline to lay a charge because it is unlikely to result in a prosecution. Indeed, it could be considered wasteful to commit valuable investigative and case preparation resources to incidents best resolved through processes that do not involve prosecution.

NOVA SCOTIA
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CONDITIONAL SENTENCES

The Supreme Court of Canada in Regina v. Proulx (2000), 144 C.C.C.(3d) 449, and in a number of other judgments issued shortly thereafter, has established what amounts to an implementation guide in regard to conditional sentencing. Chief Justice Lamer, at paragraph 127 of the judgment, summarizes his instructions (excerpts from those instructions are appended to these Guidelines). The instructions from the Supreme Court of Canada, however, are in general terms and many issues continue to require Crown Attorneys to exercise careful judgment. These guidelines are intended to assist in the exercise of that judgement and to ensure consistency in approach.

A number of principles emerge from the developing jurisprudence and from the Criminal Code provisions describing the conditional sentence regime. Policy positions have been developed to assist in the application of those principles to particular cases. The key principles which have been identified, and the related policy provisions, are as follows:

(1) If the offence carries a minimum term of imprisonment or if the offence, having regard to the established principles of sentencing, calls for a penitentiary sentence, the offence is excluded from the conditional sentencing regime.

Crown Attorneys should continue to press for penitentiary sentences in the same cases where penitentiary sentences were appropriate prior to the introduction of conditional sentencing in to the Criminal Code. The conditional sentencing regime does not impact these cases.

(2) As a condition precedent to the imposition of a conditional sentence, the court must be satisfied that the offender would pose no danger to the community while the sentence is being served. Crown Attorneys have a duty to ensure that the court is fully informed in regard to (1) the risk of the offender re-offending, and (2) the danger that could ensue in the event of re-offending. **If the offender poses a risk to the community, the Crown Attorney must oppose a conditional sentence.** Consideration of the risk imposed by the offender should include the risk of **any** criminal activity.

(3) Although a conditional sentence can provide significant denunciation and deterrence, there may be some cases in which the need for denunciation or deterrence is so pressing that incarceration will be the only suitable way in which to express condemnation of the offender's conduct or to deter similar conduct in the future. Very often, the following cases fit into this category:

- cases of violence involving serious bodily harm or death, whether intended or not
- sexual offences which cause significant psychological or physical harm
- sexual offences against children
- driving offences causing death, wherein the consumption of alcohol is a factor
- cases involving corruption or a breach of trust, wherein there is planning or deliberation and a substantial loss of money.

In these cases, and in other cases that raise similar concerns, Crown Attorneys must not, absent exceptional circumstances, advocate or agree to the imposition of a conditional sentence.

"Exceptional circumstances" cannot be defined in absolute terms but they are those circumstances wherein public safety, including that of specific victims, or the overall public interest is demonstrably better served by the imposition of a conditional sentence. When Crown Attorneys form a tentative opinion that exceptional circumstances exist, they should consult with supervisors and experienced colleagues to confirm their position. The exceptional circumstances should be noted in the prosecution file, and in appropriate cases, they should also be placed on the record in court. Examples of the public interest factors which may be considered in determining whether exceptional circumstances exist are the following:

- the physical health, mental health or infirmity of the accused or a victim;
- a victim who will be particularly traumatized and potentially re-victimized by testifying in court;
- the victim strongly opposes incarceration for the accused;
- significant problems of proof are apparent, even though a realistic prospect of conviction exists.

(4) Where the punitive and deterrent objectives of sentencing are less pressing, conditional sentences may be appropriate. When conditional sentences are appropriate, it is intended that conditional sentences include both punitive and rehabilitative aspects.
Generally, Crown Attorneys should recommend conditions such as house arrest which are restrictive of the offender's liberty. Sentence recommendations should also reflect the proposition that the more serious the offence the longer and more onerous the conditional sentence should be. Crown Attorneys should ensure that the court is accurately informed of the level of supervision available in the community. **If the available supervision cannot ensure public safety, the Crown Attorney must oppose a conditional sentence.**

> A history of failure by the accused to abide by the terms of supervision orders (parole, probation, judicial interim release, etc.) should be drawn to the attention of the sentencing judge and should cause the prosecutor to resist a conditional sentence.

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PRACTICE NOTES:

Caution re early variations

When Crown Attorneys agree to a conditional sentence, it is usually done on the assumption that the onerous and restrictive conditions will continue for the duration of the order. This should be clearly stated on the record in court in order to reduce the likelihood of the accused successfully applying to vary the conditions soon after the sentence is imposed.

Aboriginal offenders

Crown Attorneys are also reminded of the provisions of Section 718.2(e) of the Criminal Code which alters the method of analysis which each sentencing judge must use in determining the nature of a fit sentence for an aboriginal offender. The court must consider the unique situation of each aboriginal offender. Even where counsel do not adduce this evidence, e.g. when the offender is unrepresented, it is incumbent upon the sentencing judge to attempt to acquire information regarding the circumstances of the offender as an aboriginal person. Crown Attorneys should assist the court in this regard in order to avoid the error in law which will necessarily arise if the court does not consider the unique situation of the aboriginal offender.

Level of supervision of offenders

Reliable information in regard to the supervision that will pertain to offenders is crucial to the conditional sentence regime. Unless the prosecutor is satisfied that the level of supervision of the offender will ensure public safety, the prosecutor cannot agree to or recommend a conditional sentence. It is essential that the prosecutor be aware of the nature and frequency of contacts with the offender by supervisory personnel which will occur once the offender is subject to a conditional sentence order. The prosecutor also has a duty to ensure that the court is accurately informed in regard to the level of supervision. This Practice Note is intended to assist with these issues.

In Nova Scotia, supervision of offenders serving conditional sentences is the responsibility of the Nova Scotia Department of Justice, Correctional Services Division (Community Corrections Section). This branch of government has developed detailed policies and procedures relating to the supervision of offenders serving conditional sentences. The most relevant policy provisions, revised as of January 9, 2004, are attached.

It should be noted that offenders under house arrest are maintained at the maximum level of supervision, with an elevated level of contact (see section 3.4.1). Such offenders will be supervised "at a frequency of at least three contacts per month, exclusive of telephone monitoring checks and including at least two personal contacts with the Probation Officer" (see section 3.4.1.1). Almost all conditional sentences in Nova Scotia involve house arrest, and so this is the usual level of supervision.

Prosecutors should assume that the supervision of particular offenders will be carried out in accordance with the stated policies and procedures of the Correctional Services Division. If anecdotal information suggests that the level of supervision may vary significantly from established policies, clarification and confirmation should be obtained from appropriate officials of the Correctional Services Division. Prosecutors must be careful not to inadvertently mislead the court in regard to the level of monitoring and supervision that is likely to occur in a particular case by presenting unconfirmed information to the court.

3.3 Case Supervision

3.3.1 For offenders on conditional sentence, contact standards for the levels of supervision identified in the Risk Assessment Profiles will be as follows:

3.3.1.1 Maximum: the offender will be seen at least once every 14 days in person by the Probation Officer or delegate, to be supplemented with additional and collateral contacts as required.

3.3.1.2 Medium: the offender will be seen at least once every 28 days in person by the Probation Officer or delegate, to be supplemented with additional and collateral contacts as required.

3.3.1.3 Minimum: offenders on conditional sentence will not be supervised at a level lower than that indicated for medium in section 3.3.1.2 above.

3.3.2 Additional and collateral contacts for offenders on conditional sentence may include telephone reporting, counter reporting, reporting to police, contact with employer, contact with treatment agency and contact with spouse.

3.3.3 In exceptional circumstances, requirements for the offender to report in person may be varied, where approved by the Senior Probation Officer. Any such decision as well as the accompanying rationale is to be clearly documented on the offender file.

3.3.4 The stated levels of supervision are intended as absolute minimums in all cases. Where the Probation Officer is of the opinion, for whatever reason, that a higher level of supervision is warranted, the offender shall be required to maintain contact at that level.

3.3.5 Offenders on conditional sentence are not to be considered for placement in Administrative inactive Supervision (AIS).

3.3.6 All contacts either with or on behalf of the offender shall be recorded on the Case Recording Sheet.

3.4 House Arrest

3.4.1 Where house arrest is a requirement of the conditional sentence, the case shall be maintained at the maximum level of supervision for the duration of the house arrest condition, with increased contact requirements as follows:

3.4.1.1 the offender will be supervised at a frequency of at least three contacts per month, exclusive of telephone monitoring checks and including at least two personal contacts with the Probation Officer;
3.4.1.2 a home check/visit will be made to the offender's home within 14 days of the initial appointment with the offender and subsequent home visits will be made at a frequency of at least once per month; and
3.4.1.3 telephone monitoring will be used at least twice weekly during the period of house arrest.

3.5 Community and Home Checks/Visits

3.5.1 Community and home checks/visits will be conducted at the discretion of the conditional sentence supervisor as necessary to meet the case supervision requirements of the conditional sentence. While home checks/visits are required in specific circumstances, the personal safety of staff is of such paramount importance that it may override this requirement as determined on a situation-by-situation basis by the Probation Officer.

3.5.2 All community and home checks/visits shall be conducted in keeping with established procedures regarding staff safety as outlined in Subject 5.09.02 of Policy and Procedures.

Appendix

Excerpts from R. v. Proulx (2000), 140 C.C.C. (3d) 449, para.127

1. Bill C-41 in general and the conditional sentence in particular were enacted both to reduce reliance on incarceration as a sanction and to increase the use of principles of restorative justice in sentencing.

2. A conditional sentence should be distinguished from probationary measures. Probation is primarily a rehabilitative sentencing tool. By contrast, Parliament intended conditional sentences to include both punitive and rehabilitative aspects. Therefore, conditional sentences should generally include punitive conditions that are restrictive of the offender's liberty. Conditions such as house arrest should be the norm, not the exception.

3. No offences are excluded from the conditional sentencing regime except those with a minimum term of imprisonment, nor should there be presumptions in favour of or against a conditional sentence for specific offences.

4. ... In a preliminary determination, the sentencing judge should reject a penitentiary term and probationary measures as inappropriate. Having determined that the appropriate range of sentence is a term of imprisonment of less than two years, the judge should then consider whether it is appropriate for the offender to serve his or her sentence in the community.

5. ... A conditional sentence need not be of equivalent duration to the sentence of incarceration that would otherwise have been imposed. The sole requirement is that the duration and conditions of a conditional sentence make for a just and appropriate sentence.

6. The requirement in s.742.1(b) that the judge be satisfied that the safety of the community would not be endangered by the offender serving his or her sentence in the community is a condition precedent to the imposition of a conditional sentence, and not the primary consideration in determining whether a conditional sentence is appropriate. In making this determination, the judge should consider the risk posed by the specific offender, not the broader risk of whether the imposition of a conditional sentence would endanger the safety of the community by providing insufficient general deterrence or undermining general respect for the law. Two factors should be taken into account: (1) the risk of the offender re-offending; and (2) the gravity of the damage that could ensue in the event of re-offence. A consideration of the risk posed by the offender should include the risk of any criminal activity, and not be limited solely to the risk of physical or psychological harm to individuals.

7. Once the prerequisite of s.742.1 are satisfied, the judge should give serious consideration to the possibility of a conditional sentence in all cases by examining whether a conditional sentence is consistent with the fundamental purpose and principles of sentencing set out in ss.718 to 718.2. This follows from Parliament's clear message to the judiciary to reduce the use of incarceration as a sanction.

8. A conditional sentence can provide significant denunciation and deterrence. As a general matter, the more serious the offence, the longer and more onerous the conditional sentence should be. There may be some circumstances, however, where the need for denunciation or deterrence is so pressing that incarceration will be the only suitable way in which to express society's condemnation of the offender's conduct or to deter similar conduct in the future.

9. Generally, a conditional sentence will be better than incarceration at achieving the restorative objectives of rehabilitation, reparations to the victim and the community, and promotion of a sense of responsibility in the offender and acknowledgment of the harm done to the victim and the community.

10. Where a combination of both punitive and restorative objectives may be achieved, a conditional sentence will likely be more appropriate than incarceration. Where objectives such as denunciation and deterrence are particularly pressing, incarceration will generally be the preferable sanction. This may be so notwithstanding the fact that restorative goals might be achieved. However, a conditional sentence may provide sufficient denunciation and deterrence, even in cases in which restorative objectives are of lesser importance, depending on the nature of the conditions imposed, the duration of the sentence, and the circumstances of both the offender and the community in which the conditional sentence is to be served.

11. A conditional sentence may be imposed even where there are aggravating circumstances, although the need for denunciation and deterrence will increase in these circumstances.

NOVA SCOTIA
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SAMPLING AUTHORIZATIONS

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DNA IDENTIFICATION ACT: AUTHORIZATIONS and ORDERS re SAMPLING

INTRODUCTION

DNA Databank legislation has created a valuable tool for law enforcement. A properly and fully subscribed National DNA Databank promises to assist police in the identification of persons who have committed crimes, both local and cross-jursdictional. In this way, its reputation for success might serve as a deterrent to offenders to re-offend. As importantly, this databank should aid law enforcement to narrow the focus of investigation by excluding as suspects persons who have been wrongly accused. Crown Attoneys play an integral role in the successful utilization of this legislated scheme.

This policy document provides guidance to prosecutors in the exercise of discretion available under the *DNA Identification Act*, and the rationale for many aspects of the policy is set out. This document also suggests "best practices" to be utilized in the practical application of the policies.

The policy and practice guidance contained in this document may be amended as courts interpret the DNA legislation.

1. DNA WORKING GROUP

The PPS shall maintain, as a standing committee, a DNA Working Group. The mandate of such body shall include, but not be limied to, developing and recommending for approval of PPS Management Commitee policy, practice and procedure protocols intended to promote uniformity and consistency within the Service in seeking authorizations/orders for DNA sampling of offenders found guilty or convicted of designated offences.

In anticipation of the then proposed DNA legislation, the PPS etablished a DNA Working Group. It consisted of a Chief Crown, five Crowns from Halifax Region and one Crown from each of Central, Western, and Cape Breton Regions.

The group liaised with Federal Department of Justice officials, Police, and Crown Counsel from other jurisdictions in an effort to encourage uniformity and cosistency of practice across jurisdictions. The group has continued to function since the coming into force of the *DNA Identification Act*. It maintains a free flow of information with cunterparts throughout the country. The established network allows for ready access to resarch papers and scholarly articles on the effectiveness on DNA Databank and timely release of judicial interpretation of DNA legislation.

The DNA Working Group has proven to be a valuable asset to the PPS in providing practice memoranda and guidance to Crowns throughout the Service. The memoranda and suggested practices have been developed as a result of reviewing information about the experiences of Crown Attorneys in the courts of other jurisdictions. These communications have been designed or intended to promote uniformity and consistency of practice in relation to the DNA legislation.

A DNA Working Group, as a standing committee, provides the PPS with a valuable asset. Such body is able to keep abreast of policy and practice developments in other jurisdictions. The group is able to access the latest development in judicial interpretation of DNA legislation. As a consequence, therefore, the DNA Working Group is ideally suited to develop and recommend to the PPS Management Committee policy, practice and procedure protocols in relation to seeking authorizations and/or orders for DNA sampling of offenders found guilty or convicted of designated offences.

The continued existence of a DNA Working Group, will allow the Service to keep abreast of the evolving body of decided cases in relation to this legislation and the developing literature on the effectiveness of similar legislative schemes in other jurisdictions.

2. RETROACTIVE AUTHORIZATIONS

The DNA Working Group, in addition to the other responsibilities, shall process on behalf of the police, applications for authorizations for sampling from those persons identified as retroactive offenders. In all such cases, the Police and Crown Attorneys shall seek DNA sampling authorizations for retroactive offenders. In rare and exceptional circumstances, the DNA Working Group, through consensus, may in its discretion decide not to proceed with such an application if the circumstances of the offences or offender do not require such an authorization.

The following offenders are covered retroactively: dangerous offenders, murderers who committed murders at different times, and sex offenders with multiple sex offence convictions serving a least two years incarceration at the time of the Crown's application.

Given public safety concerns, the serious nature of the offences in question, and the potential usefulness of DNA testing to solve "cold cases", current cases and future cases, it would be extremely rare to decide not to proceed with a retroactive DNA Databank application. There must remain, however, a discretion not to proceed with such an application if the circumstance of the offence or offender do not require such an order. It is difficult to predict the unique circumstances which might lead the Crown not to seek such an order, but any such decision should be the subject of consultation and should be reported centrally to ensure consistency. The DNA Working Group responsible for making such applications, shall exercise discretion not to proceed with such applications only through consensus and shall keep a record of the reasons for exercising such discretion in each case.

3. RETROSPECTIVE AND PROSPECTIVE MATTERS

Under the **DNA Identification Act**, cases before the courts after June 30, 2000 are categorized as either retrospective (offence committed prior to June 30, 2000) or prospective (offence committed on or after June 30, 2000). As a result, Crown policy considerations and practices must reflect this legislative differentiation. The date of offence impacts significantly on the Crown burden in obtaining authorizations/orders for DNA sampling of offenders found guilty or convicted of designated offences. The distinction between primary and secondary designated offences further influences Crown policy and practice.

(1) Primary Designated Offences

(a) Prospective:

The Crown Attorney shall remind the court of its obligation to issue a DNA sampling order, upon finding guilt or entering a conviction, in all cases involving primary designated offences committed after June 30, 2000. The defence may, however, apply to oppose the issuing of the order. In all such cases, the Crown Attorney shall not join in the defence application.

In cases of prospective primary designated offences, the court is required to make the order for DNA sampling unless the offender meets the burden established in paragraph 487.052 of the *Criminal Code*. The Crown does not need to apply for an order in such case. The Crown Attorney should, however, be prepared to bring the requirement for a DNA sampling order to the court's attention, if necessary.

Given the very serious nature to the primary designated offences, it is accepted that the best interests of the administration of justice requires a DNA sampling order for primary designated offences absent exceptional circumstances. It is difficult to define in absolute terms what would be exceptional circumstances. The Crown Attorney should be prepared to argue that the court's decision to not issue an order in such case must be limited to circumstances where public safety, including that of specific victims, or the overall public interest is demonstrably better served by not seeking a DNA sampling order. This is especially so where the intrusion on the offender's physical being is so minor in the actual sampling process. The Crown Attorney should not join in the defence argument that such sampling should not be ordered.

(b) Retrospective:

In cases in which an offender is found guilty or convicted of a primary designated offence committed prior to June 30, 2000, the Crown Attorney shall apply for an order for DNA sampling unless in the opinion of the Crown Attorney it would be inappropriate in the circumstances to do so.

> **In such case, the Crown Attorney shall provide on the file, written reasons for not seeking the order. In determining whether it would be inappropriate in the circumstances to seek an order, the Crown shall consider whether the circumstances of the offence or offender disclose a reasonable possibility that the offender poses a risk to others in the community to re-offend, or whether the offender has committed serious offences in the past for which he or she has not been charged.**

As with prospective primary designated offences, it is accepted that the best interests of the administration of justice requires the Crown to seek a DNA sampling order in such cases. The underlying nature of the offence and offender for primary designated offences are almost inevitably so serious that the Crown Attorney should ordinarily seek DNA sampling orders. The Crown Attorney, however, may in appropriate circumstances, exercise discretion to not seek such an order. The Crown Attorney must, however, provide written reasons in the file for not seeking the order. The Crown Attorney should bear in mind the preceding arguments under policy 5(a) regarding exceptional circumstances.

In determining whether to seek an order, the Crown Attorney should assess what risk, if any, the offender poses to others in the community to re-offend, or reliable information that suggests the offender has committed serious offences in the past for which he or she has not been charged. In applying such assessment, the following non-exhaustive set of factors alone or in combination may assist the Crown Attorney:

- offender appears to take pleasure in suffering of people or animals;
- gratuitous violence;
- offender enlists others in criminal behaviour;
- inability to control sexual impulses;
- hate crime;
- sexual motive;
- home invasion motive;
- use of weapons;
- prior convictions for violent or designated offences;
- high degree or frequency of violent or aggressive behaviour;
- transient lifestyle as reflected in criminal record;
- psychological, pre-sentence, or other reports indicating risk of recidivism;
- pattern of escalating violence or other criminality;
- offender habitually targets one particular victim or class of victim;
- stalking behaviour;
- physical/psychological harm caused to victim;
- offender has or had access to a vulnerable victim;
- deliberate targeting of the vulnerable;
- offender's actions reflect an indifference to others;
- deliberate, violent intent;
- violent/criminal behaviour caused by unresolved addiction;

- prior acts of violence/criminality which are not reflected on criminal record;
- membership in a criminal organization as defined by the *Criminal Code*.

The foregoing should lead one to seek a DNA sampling order. The following set of factors may lead one **not** to seek such an order:

- first offender;
- youthful offender;
- psychological/Psychiatric, or pre-sentence report indicating low risk of recidivism;
- relatively minor instance of the offence in question;
- no other indicators that the offender is at risk of re-offending.

(2) Secondary Designated Offences

(a) Prospective:

The court has a discretion to order DNA sampling in cases of secondary designated offences committed after June 30, 2000. The Crown Attorney should argue in favour of the granting of an order where, in the opinion of the Crown Attorney, the circumstances of the offence or offender disclose a reasonable possibility that the offender poses a risk to others in the community to re-offend, or that the offender has committed serious offences in the past for which he or she has not been charged. Whether or not an order is granted, the court must give reasons for its decision. The Crown Attorney should remind the court of this obligation.

For prospective secondary designated offences, the court must consider whether or not the circumstances of the offence and offender warrant the granting of a DNA sampling order. The court must determine whether or not it is in the best interests of the administration of justice to issue such an order. It is not a Crown application per se, but in practice the Crown Attorney should be prepared to argue for the issuing of an order.

Crown Attorneys should argue that the court must balance the public interests in safety and in preventing and detecting crime, together with the offender's privacy and security interests. Points to raise are: the sampling process constitutes a *de minimus* physical intrusion; the offender has a reduced expectation of privacy after being found guilty or being convicted; and the legislation provides sufficient protection for informational privacy.

The offences covered as secondary designated offences range from the most minor assault to very serious offences such as bank robbery and criminal negligence causing death. Arguably, in many cases it will be in the best interests of the administration of justice to have the court issue the DNA sampling order. The Crown Attorney should be able to articulate a reasonable basis upon which he or she can argue for such an order. Risk to others in the community to re-offend and knowledge the offender has committed serious offences in the past for which he or she has not been charged, may provide such justification. In determining such risk, the Crown Attorney should have regard to the list of factors set out in the discussion on retrospective primary designated offences above. The list is not exhaustive. Whether an order is granted in such case, the court must give reasons for its decision. The Crown Attorney should remind the court of its obligation to do so.

(b) Retrospective:

The Crown Attorney should apply for a DNA sampling order in cases involving secondary designated offences committed prior to June 30, 2000, where, in the opinion of the Crown Attorney, the circumstances of the offence or offender disclose a reasonable possibility that the offender poses a risk to others in the community to re-offend or that the offender has committed serious offences in the past for which he or she has not been charged.

The policy and practice considerations for retrospective secondary designated offences are virtually identical to prospective secondary designated offences. The only difference is the requirement for the Crown to make the application for the retrospective offences. The court is required to give reasons.

4. Existing DNA Profiles

The Crown Attorney with carriage of a case should not seek a DNA sampling order if the Crown Attorney is aware that the offender's DNA profile is already in the DNA Databank convicted offender's index. In such case the Crown Attorney should state on the record the reason for not seeking a DNA sampling order.

Under Section 487.053 of the *Criminal Code* a court cannot make a sampling order if the Crown advises the court that there is an existing DNA profile for the offender in the National DNA Databank. Consequently, there is some onus on the Crown to make inquiry as to the existence of any DNA profile for a specific offender. The RCMP should include the existence of DNA profile in the National DNA Databank on the CPIC record for offenders. It would, therefore, be wise for Crown Attorneys in all cases in which they intend to make an application or in which an order otherwise must be granted, to check the CPIC printout.

There may be occasions where the offender or counsel for the offender advises a Crown Attorney that an earlier sample of bodily substances for DNA analysis has been taken from an offender. In such circumstances the Crown Attorney would be prudent to make inquiries with the RCMP and the National DNA Databank about the existence of a profile that has not been entered on CPIC. Should we provide a telephone number for the databank here?

In an effort to assist Crown Attorneys in their efforts to be aware of the existence of an offender's DNA profile, it is necessary that the local record keeping system within the PPS (index cards) record where DNA sampling orders have been granted. Such entry should also be contained within the JOIS system.

Furthermore, in cases in which DNA sampling orders have been granted which are taken on Appeal, the Crown Attorney conducting the appeal on behalf of the PPS, must be advised of the existence of the DNA sampling order. It is, then, necessary that the appellate Crown Attorney communicate to the PPS records management staff the outcome of the appeal and the effect, if any, on such DNA sampling order.

In any case in which the Crown Attorney is aware of an existing DNA profile for an offender, the Crown Attorney need not address administration of justice and public interest considerations. The Crown Attorney need only state on the record that a DNA sampling order is not sought because of the existing profile.

5. Other Best Practice Considerations

(a) There is no requirement under the DNA legislation for the Crown to give notice of an intention to make an application for an authorization or order for DNA sampling. There has been judicial comment, however, favouring a Crown practice of providing an intimation of an intention to seek DNA sampling in a given case. The best practice is to have the Crown Attorney, at the time of scheduling the sentencing hearing, state on the record in court that a DNA sample will be sought.

(b) Prior to the actual application for DNA sampling being made in court, the Crown Attorney with carriage of the file should contact the investigating policing agency to ascertain the arrangements for carrying out the sampling procedure. As a matter of best practice, the Crown Attorney should be aware of alternative arrangements given custodial or non-custodial sentences for the particular offender.

(c) For non-custodial sentences and non-custodial offenders, the Crown Attorney successful in obtaining a DNA sampling order should request, on the record, that the court direct the offender to accompany a peace officer and remain in such peace officer's custody for purposes of carrying out the DNA sampling procedure.

(d) In seeking DNA sampling orders, as a best practice, Crown Attorneys should argue that the method of sampling be left to the discretion of the peace officer taking the samples. Blood sampling is the preferred method. It is a *de minimus* physical intrusion and has a success rate far superior to either alternative method.

Plea Negotiations

The Crown Attorney's decision as to whether or not to seek DNA sampling shall not become part of the plea negotiation process. It is not inappropriate, however, for the Crown and defence to jointly submit that a DNA order should issue.

The issue of whether the Crown will advocate for DNA sampling for an offender should be determined independently of any plea resolution agreement. In particular, counsel should never undertake to forego DNA sampling as a "bargaining chip". Given the importance of DNA sampling to the resolution of crime and protection of the public it is inappropriate to agree to forego databanking where the offender is otherwise an appropriate candidate. Additionally, when dealing with an offence after June 30, 2000, counsel need to be aware of the consequence of accepting a guilty plea to a secondary designated ofence when a primary designated offence was originally charged. The Crown need not appy for a DNA order for a primary designated offence; rather, the offender must demonstrate that such an order would be grossly disproportionate. In the case of a secondary designated offence, the Crown Attorney must argue, and the Judge must be satisfied that such anorder is "in the best interests of the administration of justice". For prospective offences, the process, the onus and burden of proof, and the legal test for obtaining an order are all affected by the decision to accept a plea to a secondary designated offence rather than a primary designated offence.

This is not to say that it is inappropriate to accept such a plea. The Crown Attorney should refer to the Policy on Resolution Discussions and Agreements for further guidance on this issue. In weighing the public interest components of such a proposed resolution, however, the Crown Attorney should consider the impact the resolution will have on providing samples for inclusion in the DNA Databank.

Flagging Files

The PPS shall maintain a system to ensure that files involving potential DNA Databank candidates are flagged as such. There shall be an explicit flag on newly created files to indicate the potential for DNA sampling. Crown Attorneys with carriage of files shall review each file for the purpose of identifying potential DNA Databank candidates and flag files appropriately.

Each Chief Crown Attorney should set up and maintain a system in his/her region that will ensure that files involving potential DNA Databank candidates are properly flagged. There should be an explicit flag on newly created files to indicate the potential for a DNA Databank sampling order. This flag would ensure that counsel who have ultimate carriage of a file will be alerted to the DNA sampling issue. Where possible, pre-existing files should be similarly flagged. Any such flagging system should permit the Crown Attorney to indicate by simply checking off whether the file involves either a primary or a secondary designated offence or no designated offence. It should allow the Crown Attorney to indicate, if it is a designated offence, whether it is retrospective or prospective in time. There should also be an indication of whether an application is made for an authorization or order and whether such order or authorization is granted. Such flagging will permit easy review and audit of Crown files for statistical purposes.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

DRINKING AND DRIVING / IMPAIRED DRIVING OFFENCES: PENALTY FOR SECOND AND SUBSEQUENT CONVICTIONS

NATURE OF DOCUMENT:	DPP DIRECTIVE
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CERTAIN WORDS AND PHRASES HAVE THE MEANINGS ESTABLISHED IN THE **"WORDS & PHRASES"** SECTION OF THIS PART OF THE MANUAL.

SENTENCING OF PERSONS CONVICTED OF A SECOND OR SUBSEQUENT DRINKING AND DRIVING OFFENCE

Where a person is charged with an offence under Section 253(a) or (b), or Section 254(5) of the Criminal Code and that person has previously been convicted of an offence or offences set out in Section 255(4) of the Criminal Code, the Crown Attorney must, absent exceptional circumstances, proceed by way of the second offence provisions of the Criminal Code as set out in Section 727 and seek at least the minimum punishment of fourteen days imprisonment when the charged offence occurred within **five** years of the date of sentence for a previous offence.

Where the charge is the **third** or subsequent offence committed within **ten** years of the date of sentence for any prior drinking and driving offence, the Crown Attorney must, absent exceptional circumstances, proceed by way of the subsequent offence provisions and seek at least the minimum punishment of ninety days imprisonment.

"Exceptional circumstances" cannot be defined in absolute terms but they are those circumstances wherein the overall public interest is demonstrably better served by a different approach. The exceptional circumstances should be noted in the prosecution file, and in appropriate cases, they should also be placed on the record in court. Examples of the public interest factors which may be considered in determining whether exceptional circumstances exist are the following:

- the physical health, mental health or infirmity of the accused
- a victim who will be particularly traumatized and potentially re-victimized by testifying in court
- the victim strongly opposes incarceration for the accused
- significant problems of proof, even though a reasonable prospect of conviction exists.

It may also be appropriate for Crown Attorneys to serve a Notice of Intention to Seek Greater Punishment due to a previous conviction even if outside the five-year period. The circumstances of the current offence and the offender are relevant to this decision.
Generally, the existence of any of the following circumstances will mandate the seeking of an increased penalty:

- a death or serious injury, or extraordinary property damage
- a blood alcohol level of more than 160 mg. alcohol in 100 ml. of blood, or other evidence of a high degree of impairment
- previous incarceration for driving offences.

The following matters relating to the record should also be considered:

- the circumstances of the previous incidents, including the extent of impairment, any injuries or property damage and the nature of the driving

- the pattern of the previous convictions, including the sentencing dates and any "gaps" in the record
- the sentences previously imposed and the effectiveness of any treatment programs or probation orders

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PRACTICE NOTE

The policy of the PPS in regard to the sentencing of recidivist impaired drivers reflects repeated dicta of appellate courts that, generally, deterrence is to be the paramount consideration in the sentencing of such drivers [see, for example, R.v.MacEachern (1990), 96 N.S.R.(2d) 68 (N.S.C.A.).

The effectiveness of the stated approach to sentencing is dependent upon Crown Attorneys having reliable information in a timely fashion. Chief Crown Attorneys should assist police forces in their jurisdictions in establishing case preparation processes which include, prior to first appearance for impaired driving offences, a thorough check for prior convictions under the Criminal Code and relevant provincial legislation. It is also important to know whether or not there are any outstanding charges for similar offences. Because most offences involving drinking and driving are considered to be indictable until an election is made by the Crown, police agencies should be encouraged to utilize the fingerprinting provisions of the Identification of Criminals Act upon the arrest of impaired drivers.

Protocols in regard to drinking and driving offences should also include timely service upon the accused of a Notice of Intention to Seek Greater Punishment.

Crown Attorneys, when reviewing a drinking and driving case, should be satisfied that they have all relevant information in regard to the background of the accused before the accused enters a plea to a charge. Particular care should be taken when there is an indication that the accused wishes to enter a plea on first appearance and a thorough record review has not been completed. Similarly, details of previous convictions should be available before the prosecutor determines the position to be taken on sentence. Previous convictions for dangerous driving or criminal negligence should be reviewed to ascertain whether or not alcohol was involved.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

YOUTH CRIMINAL JUSTICE ACT - SECTION 36
(Finding of guilt)

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YOUTH CRIMINAL JUSTICE ACT - SECTION 36
(Finding of guilt)

In cases where a young person pleads guilty, the Crown Attorney in court at the time of the guilty plea(s) should request the court to conduct the Section 36 (finding of guilt) hearing at that time rather than having this determination adjourned to a later date. This will assist in establishing at the earliest time a pattern of findings of guilt. This can become significant in the case of a young person who is offending repeatedly, as it directly impacts on a court's ability to consider detention before sentencing for such an individual.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

FIREARMS REGISTRATION OFFENCES

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FIREARMS REGISTRATION OFFENCES

To utilize valuable prosecution resources responsibly and effectively, it is essential that these resources be focused on the prosecution of substantive criminal offences. Only rarely would it be in the public interest to expend prosecution resources in the pursuit of alleged offences arising from the registration scheme relating to rifles and shotguns, unless the possession or use of such firearms was connected to other unlawful activity.

I hereby direct that:

1. Offences under the Firearms Act are not to be prosecuted by members of the Nova Scotia Public Prosecution Service.

2. Where an option exists as to whether a charge should be laid under the Firearms Act or under the Criminal Code, and the contemplated charge arises from an incident not involving any other unlawful activity, prosecutors should advise the police to lay the charge under the Firearms Act.

3. If a Criminal Code registration offence [Section 91(1) or 92(1)] is laid by the police or any other informant, the matter will be referred to the Deputy Director of Public Prosecutions. The Deputy Director will refer the matter to the Federal Prosecution Service for prosecution. If the Federal Prosecution Service declines to prosecute, the charge will not be prosecuted by the provincial prosecution service unless public interest circumstances exist for doing so. Public interest circumstances which may justify proceeding would include such matters as a history of firearms offences, or the blatant disregard of police warnings. Prosecution of such charges will only occur with the approval of the Chief Crown Attorney for the region where the charge arose.

June 3, 2003.

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HOME INVASIONS

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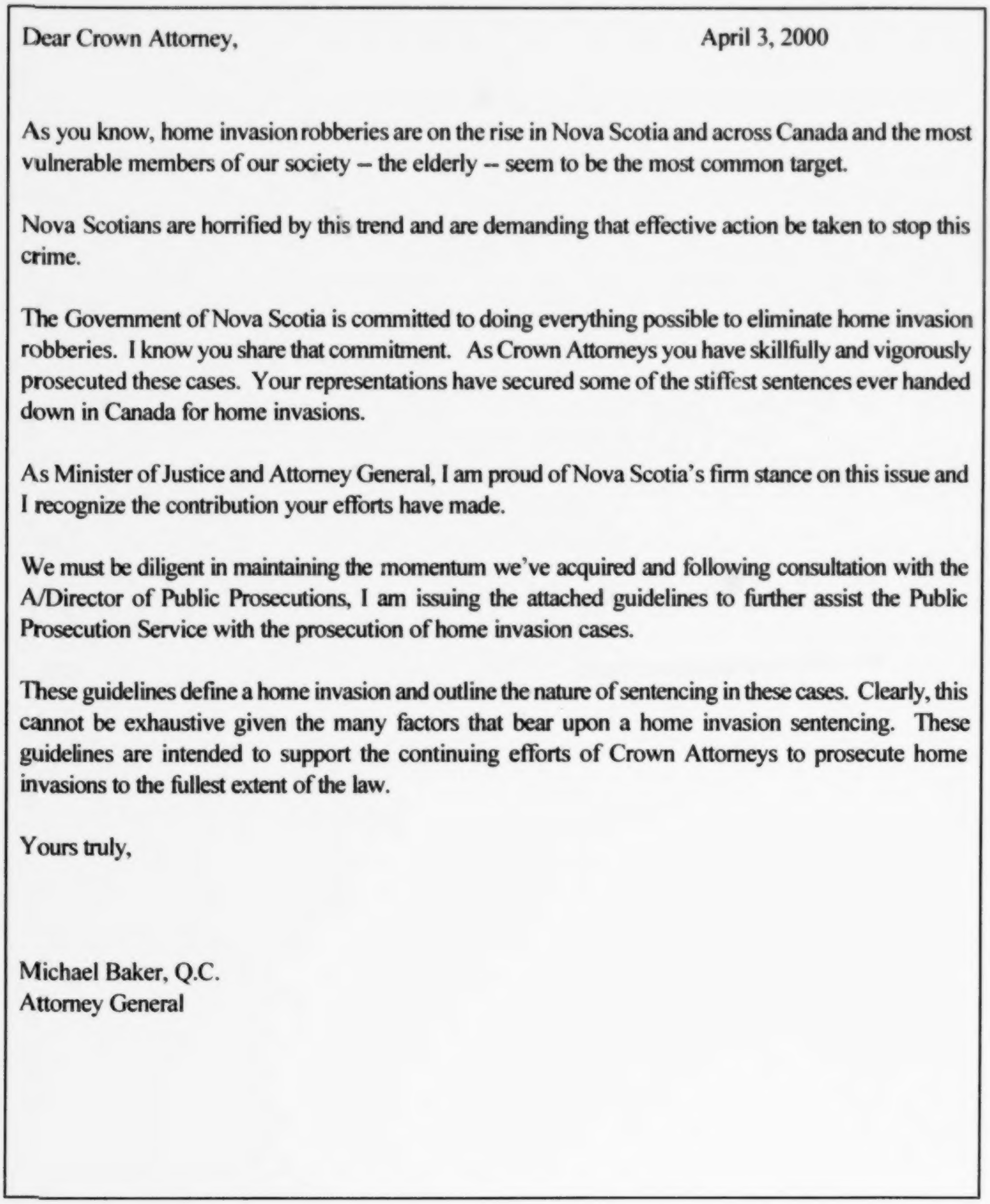
HOME INVASIONS



Dear Crown Attorney, April 3, 2000

As you know, home invasion robberies are on the rise in Nova Scotia and across Canada and the most vulnerable members of our society -- the elderly -- seem to be the most common target.

Nova Scotians are horrified by this trend and are demanding that effective action be taken to stop this crime.

The Government of Nova Scotia is committed to doing everything possible to eliminate home invasion robberies. I know you share that commitment. As Crown Attorneys you have skillfully and vigorously prosecuted these cases. Your representations have secured some of the stiffest sentences ever handed down in Canada for home invasions.

As Minister of Justice and Attorney General, I am proud of Nova Scotia's firm stance on this issue and I recognize the contribution your efforts have made.

We must be diligent in maintaining the momentum we've acquired and following consultation with the A/Director of Public Prosecutions, I am issuing the attached guidelines to further assist the Public Prosecution Service with the prosecution of home invasion cases.

These guidelines define a home invasion and outline the nature of sentencing in these cases. Clearly, this cannot be exhaustive given the many factors that bear upon a home invasion sentencing. These guidelines are intended to support the continuing efforts of Crown Attorneys to prosecute home invasions to the fullest extent of the law.

Yours truly,

Michael Baker, Q.C.
Attorney General

"Home Invasion" Defined

The Nova Scotia Court of Appeal in *R. v. Harris*, [2000] N.S.C.A. 7 at 30, has essentially adopted the Alberta Court of Appeal's characterization of a home invasion robbery. *R. v. Matwiy*, [1996] A.J. No. 134 (C.A.) lists the essential features of a home invasion robbery:

A. A plan to commit a home invasion robbery (although the plan may be unsophisticated), that targets a dwelling with the intent to steal money or property, which he or she expects is to be found in that dwelling or in some other location under the control of the occupants;

B. Arms himself or herself with an offensive weapon;

C. Enters a dwelling, which he or she knows or would reasonably expect is occupied, either by breaking into the dwelling or by otherwise forcing his or her way into the dwelling;

D. Confines the occupant or occupants of the dwelling, even for short periods of time;

E. While armed with an offensive weapon, threatens the occupants with death or bodily harm; and

F. Attempts to steal money or other valuable property.

It is to be noted that features B and E are to be given wide interpretation. That is, if a person is not armed when they enter, they may well become so armed in order to facilitate the robbery. Further, actual use of violence as opposed to mere threats of death or bodily harm, of course, fall within the essential features of a home invasion robbery.
Therefore, in determining whether a break and enter and robbery is, in fact, a home invasion, keep these basic essential features in mind with a fairly liberal interpretation as the facts may warrant.

Sentence

When preparing representations for home invasion sentencings, general principles apply. There are, however, distinct characteristics or factors which, for policy reasons, will be deemed either irrelevant, or of lesser, or greater, importance by virtue of the nature of this crime.

As with any robbery or break and enter, home invasion robberies concern themselves primarily with the sentencing principles of the protection of society through general deterrence and denunciation. As a result, certain particular characteristics of an offender may become either irrelevant or of less relevance.

While aggravating factors in relation to any particular crime may be self-evident, the following non-exhaustive list ought to be considered when preparing sentencing representations in home invasion cases:

- whether a conspiracy existed to commit the crime
- the degree of planning and meditation
- the awareness that elderly people are in the house
- warnings or opportunities to reconsider their plan
- whether the phone lines or other means to seek help are disengaged
- a measure of violence either threatened or used
- the extent of ransacking and/or property damage
- whether the parties are masked
- whether the parties provide aid or call for aid before they leave
- the effect of the home invasion on the particular victims
- the nature of injuries suffered by the victims
- any subsequent crimes involving violence or serious property offences.
- the prevalence of home invasions in that community at that time.

The following factors may be considered as mitigating (some mitigating factors may be subject to provisos):

- cooperation with police when arrested
- early guilty pleas
- the absence of a record for a crime of violence
- measure of remorse
- the nature and timing of the guilty plea in the face of the Crown's case

The proviso in relation to these mitigating factors will depend on the facts. For example, cooperation with the police may be considered a sign of indifference as opposed to a sign of remorse. Further, it may be considered a sign of simply outlining one's involvement if a co-accused is pointing fingers at everybody. There must, of course, be a sufficient basis to question whether the cooperation is by virtue of indifference versus remorse. The early guilty pleas will have less of a mitigating factor if they are in the face of a very strong Crown case than if they are in the face of a weaker Crown case. However, the early guilty pleas, in sparing lengthy trials and victim testimony, will be given their appropriate weight.

It is interesting to note there are certain factors that will not be considered as mitigating, or at least of less weight in the sentencing process:

- the youth of the offender is not considered to be mitigating, as general deterrence is of primary importance - *R. v. Hingley* (1977), 19 N.S.R. (2d) 541 (C.A.);

- the "sad life principle" (a one-time only rehabilitative effort to end the criminal

cycle for those who have had a tragic and abusive upbringing) is not to be considered as mitigating in crimes of violence - *R. v. Hemlow*, (1996), 147 N.S.R. (2d) 1 (S.C.) *Harris (supra.)*;
- the absence of violence is not to be considered as a mitigating factor - *R. v. Fraser* (1997), 158 N.S.R. (2d) 163 (C.A.).

There is some issue as to whether the level of involvement is to be considered a mitigating factor. Our Court of Appeal in *R. v. Stephenson* (1998), 169 N.S.R. (2d) 159 (C.A.) has indicated there will be some mitigation where the accused had urged that no violence be used. In*R. v. Bernier*, [1999], B.C.J. No. 700 (S.C.), however, the British Columbia Supreme Court rejected this notion, and handed down a fourteen (14) year sentence. This appears to be adopted on page 31 of *Harris*.

Insofar as the role of rehabilitation of the accused person regarding the sentencing of home invaders is concerned, clearly it has a lesser role, given the primary sentencing principles. It is interesting to note, however, the lack of prospects for rehabilitation may warrant a more lengthy period of incarceration in order to protect the public.

In *Harris* the circumstances surrounding the accused's background (which would have otherwise substantiated a "sad life" consideration) served more to substantiate the proposition the accused was less likely to rehabilitate, despite his youth.

Range of Sentence

The range of sentence for a first-time home invasion robbery, was previously regarded as greater than six (6) to ten (10) years. This was the starting point for a first-time offender, where there is no actual physical violence. Our Court of Appeal in *Harris* has come closer to adopting an eight (8) year starting point, as outlined in *Matwiy (supra.)* by the Alberta Court of Appeal.

The general pronouncement as to the range of sentence, being six (6) to ten (10) years grouped home invasions with robberies of financial institutions. Our Court of Appeal, however, has clearly stated, repeatedly, that a robbery in a private dwelling will sanction more severe penalty than will that of a financial institution, as a starting point.

The notion of starting point, or bench mark, sentences has been adopted as helpful but not binding by the Supreme Court of Canada in *R. v. MacDonnell*, [1997] S.C.J. No. 42. The Supreme Court of Canada has stated these starting points, while a useful guide at the appellate level, do not truly outline the range of sentences. Parliament makes that determination. Parliament has determined life imprisonment is the maximum sentence for a "robbery." This must, therefore, be considered when dealing with the facts of any particular home invasion robbery.

A brief summary of the case law in Nova Scotia regarding home invasions will clearly outline that the Crown has been vigilant in attempting to secure severe penalties. Numerous cases from the 1970s to 1984 outline very severe sentences for home invasions. In the 1990s, while sentences upheld have been relatively severe, they have been lower than those from the 1970s and 80s. With the most recent pronouncement on home invasions robberies from our Court of Appeal, namely *Harris*, the bar of the 70s and 80s appears to have been re-established.

A brief summary of the case law regarding home invasion sentences will illustrate this point:

- *R. v. Debaie* (1972), 5 N.S.R. (2d) 24 (C.A.) The Court of Appeal affirmed a sentence of 10 years for home invasion robbery where no violence was used.

- *R. v. Baillie*; *R. v. Zinck* (1973), 5 N.S.R. (2d) 428; (C.A.) Here, a 10 year sentence was affirmed as within the appropriate range with violence used.

- *R. v. Greely* (1978), 26 N.S.R. (2d) 122 (C.A.) A sentence of 10 years was affirmed by the Court of Appeal when no violence was used.

- *R. v. Graves* (1979), 31 N.S.R. (2d) 469 (C.A.) A 9 year sentence was affirmed as within the range of sentence for a home invasion where violence had been used.

- *R. v. Johnson* (1984), 61 N.S.R. (2d) 357 (C.A.) Here, the Court of Appeal upheld a 12 year sentence for home invasion where violence had been used.

- *R. v. Hatch* (unreported, October 22, 1997, Halifax Provincial Court, Chief Judge J.L. Batiot). A sentence of 18 years total (with 2 years deemed served for remand) was handed down for being party to numerous counts of robbery and conspiracy. The sentencing principle of totality was considered in that case.

- *Fraser, (supra.)* The Crown appealed a sentence of 3 years for a home invasion. No violence was used although there was a threat of violence. The Nova Scotia Court of Appeal substituted a term of incarceration of 6 years. This was based on the facts of this particular case.

- *R. v. Foster* (1997), 161 N.S.R. (2d) 371 (C.A.) The Crown appealed a 28 months sentence for robbery. The Nova Scotia Court of Appeal substituted a sentence of 6 years of imprisonment. The facts are somewhat distinct.

- *Stephenson, (supra.)* The defence appealed a 6 year sentence for home invasion robbery. The home invasion took place sometime previous and the accused had been in no trouble with the law since. He pleaded guilty when charged, had not entered the victim's home, cooperated with the police and had a favourable Pre-sentence Report. The Nova Scotia Court of Appeal found his role in the crime was critical and that while he was sentenced to only 6 years, it was not outside the acceptable range.

- *Harris, (supra.)* A 15 year sentence was handed down for home invasion robbery involving premeditation, warnings of consequences and sentences for home invasions, extreme use of violence, limited remorse, limited mitigation for early guilty pleas and little chance for rehabilitation.

The *Harris* decision seems to deal, in a very comprehensive fashion, with the manner in which our courts ought to approach sentences for home invasion robberies. Despite the pronouncements in *Fraser* and *Foster*, the Court of Appeal in *Harris* found the fifteen (15) year sentence for the home invasion robbery was not outside of the acceptable range. The Court of Appeal in *Harris* explicitly rejected the submission that a six (6) to ten (10) year range was established for all cases of home invasion robberies (page 24, paragraph 57). The Court of Appeal in *Harris* specifically stated the statements in *Fraser* do not settle a range for home invasion robberies of six (6) to ten (10) years. Instead one must look at the individual case and all of its circumstances (page 25, paragraph 62). Finally, the Court of Appeal found a fifteen (15) year sentence, in all the circumstances to be within the range, not manifestly excessive, and fit. Protection of the public and deterrence were reasoned to be paramount and absolutely necessary.

Communications

Crown Attorneys should advise the PPS Director of Communications when prosecuting home invasion cases, particularly those which have captured a fair amount of media coverage [see the separate administrative policy re Case Bulletins]. The Director will facilitate media interviews regarding the case. It is important that the Crown's position be included in media coverage for two reasons:

- to assure the public that the case is being skillfully handled in the interests of public safety;
- to convey the Crown's commitment and determination, thus helping to deter other potential offenders.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

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IN-CUSTODY INFORMERS

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IN-CUSTODY INFORMERS

A. Introduction

Public inquiries into the wrongful convictions of Thomas Sophonow (Manitoba) and Guy Paul Morin (Ontario) document the dangers of relying on the evidence of in-custody informers. Such witnesses often generate wrongful convictions. The Honourable Peter Cory, Commissioner in the Inquiry Regarding Thomas Sophonow, had this to say about "jailhouse" informers:

> Jailhouse informants comprise the most deceitful and deceptive group of witnesses known to frequent the courts. The more notorious the case, the greater the number of prospective informants. They rush to testify like vultures to rotting flesh or sharks to blood. They are smooth and convincing liars. Whether they seek favours from the authorities, attention or notoriety they are in every instance completely unreliable. It will be seen how frequently they have been a major factor in the conviction of innocent people and how much they tend to corrupt the administration of justice. Usually, their presence as witnesses signals the end of any hope of providing a fair trial.
>
> They must be recognized as a very great danger to our trial system. Steps must be taken to rid the courts of this cancerous corruption of the administration of justice. Perhaps the greater danger flows from their ability to testify falsely in a remarkably convicting manner... Jailhouse informants are a festering sore. They constitute a malignant infection that renders a fair trial impossible. They should, as far as it is possible be excised and removed from our trial process.
>
> [Sophonow Inquiry Report, p.63]

This policy document is intended to provide prosecutors with guidance in regard to the use of evidence from witnesses who are characterized as in-custody informers. The content reflects the comments of the Honourable Fred Kaufman, Commissioner for the Commission on Proceedings Involving Guy Paul Morin*. While the evidence of an in-custody informer is admissible in court and can properly form part of the case for the Crown, **it should only be adduced at trial where there are sufficient indicia of reliability and a compelling public interest in doing so.** In addition, the evidence of an in-custody informer must not be adduced without the guidance and approval of the In-Custody Informer Committee ("the Committee") established by this policy document. Accordingly, this policy explores the meaning of "compelling public interest" in this context, including the circumstances in which an in-custody informer's evidence will demonstrate sufficient indicia of reliability that reliance upon it is warranted.

*This document is patterned on the policy re in-custody informers developed by the Ontario Ministry of the Attorney General. The Ontario policy incorporates many specific Morin Commission recommendations.

B. Definitions

For the purposes of this policy document, the following definitions are utilized:

(1) An **"in-custody informer"** is someone who:

(a) allegedly receives one or more statements from an accused

(b) while both are in custody,

(c) where the statements relate to offences that occurred outside of the custodial institution.

The accused need not be in custody for, or charged with, the offences to which the statements relate.

Excluded from this definition are informers who allegedly have direct knowledge of the offence independent of the alleged statements of the accused (even if a portion of their evidence includes a statement made by the accused).

This policy is not intended to address the use of undercover operatives outside the custodial setting, nor to limit the use of the evidence of in-custody informers to advance police investigations. Prosecutors must be sensitive to the distinction between a "true informer," (to which this policy is directed), who approaches the police with existing information and an "agent of the state", as defined in *R. v. Broyles* [1] who is placed in contact with the accused for the specific purpose of obtaining a statement. An agent of the state must not compromise the right of the accused to remain silent. The test set out in *R. v. Broyles* is this: "Would the exchange between the accused and the informer have taken place in the form and manner in which it did take place, but for the intervention of the state or its agent".

(2) **"Consideration"** includes a promise, conferral or undertaking to make "best efforts" regarding any of the following in return for, or in connection with, the in-custody informer's testimony in the criminal proceeding in which the prosecutor intends to call him or her as a witness:

- bail;
- reduction or modification of sentence or charge;
- stay, withdrawal, or dismissal of charges;
- financial assistance or reward;
- amelioration of current or future conditions of incarceration;
- any other leniency or benefit;
- the extension of any of the above to any person connected with the in-custody informer.

"Consideration" does not include measures taken to ensure the safety or security of the in-custody informer or any person connected with the in-custody informer. Prosecutors should, however, advert to the potential impact of any safety measures taken on the in-custody informer's reliability.

C. Principles to consider in determining whether there is a compelling public interest in relying on the evidence of the in-custody informer

As indicated above, the exercise of prosecutorial discretion to determine whether to rely upon the evidence of an in-custody informer will depend upon an assessment of whether there is a compelling public interest in doing so. The compelling public interest standard is equally applicable to decisions in favour of, or against, adducing the evidence of an in-custody informer. In determining whether such a compelling public interest exists in particular cases, prosecutors must consider these principles:

1. This kind of evidence has, in the past, been shown to be untruthful and has resulted in miscarriages of justice. Some informers, for example, have shown great ingenuity in securing information thought to be inaccessible to them, while others have converted details communicated by the accused in the context of an exculpatory statement into details which purport to prove the making of an inculpatory statement.

2. By definition, in-custody informers are detained by authorities, either awaiting trial or serving a sentence of imprisonment. As a result, they will often seek some consideration for their participation in the Crown's case. The danger of an unscrupulous witness manufacturing evidence for personal benefit is a significant one. Prosecutors should therefore request that the police provide a written record itemizing any consideration that they have promised to or conferred upon the informer, and/or any consideration known to them to have been sought by the in-custody or promised or conferred by other persons in authority such as correctional authorities.

3. In assessing any consideration offered or conferred upon an in-custody informer, prosecutors must be mindful of the potential temptation to enhance or manufacture evidence that necessarily arises whenever testimony is exchanged for benefit. These dangers are relevant to both individual cases and the administration of justice generally.

4. The varying circumstances of individual in-custody informers make it impossible to objectively quantify or rank the value of different forms of consideration. Nevertheless, prosecutors should address the possibility that the hazards associated with in-custody informer evidence may increase with the value of the consideration offered or conferred. In addition, the in-custody informer's reliability will not necessarily be enhanced by the fact that he or she does not appear to have sought or been offered any consideration, since the in-custody informer may be motivated by any number of factors, such as a contemplated future request for consideration, that will not be immediately apparent to the prosecutor.

5. One of the prosecutor's primary concerns in assessing whether there is a compelling public interest in adducing the evidence of an in-custody informer in a particular case will necessarily be the indicia of reliability underlying the in-custody informer's statement. In evaluating reliability, prosecutors should consider the factors set out in section E, *"Assessing the Reliability of an In-Custody Informer as a Witness."* Prosecutors should encourage police to address all of the matters relating to the assessment of reliability of the informer at the earliest opportunity. Prosecutors should be satisfied that the background of the informer has been appropriately investigated by police. "Appropriate" police investigation will generally cover those factors listed as crucial to the assessment of the reliability of an in-custody informer as a witness and a review of any available in-custody informer registry.

6. Prosecutors may consult with the police concerning the feasibility and appropriateness of requesting that the in-custody informer consent to a wiretap of further conversation with the accused. Prosecutors should bear in mind that, in taking this step, the informer will become a state agent.

7. The seriousness of the offence allegedly committed by the accused is generally an important factor to consider in assessing public interest. Gravity alone will not, however, provide sufficient justification for introducing an in-custody informer's evidence. Indeed, the pressures created in serious cases or cases which attract a great deal of public attention may call for heightened scrutiny and increased caution. For example, high profile cases may provide in-custody informers with increased motivation to manufacture evidence as well as easier access to information about the offence.

8. There is a risk that in-custody informers who have received consideration in the past and are reincarcerated in connection with subsequent offences may be motivated to fabricate evidence in exchange for consideration. Prosecutors must bear this risk in mind in assessing the in-custody informer's reliability. In order to discourage this practice, it is advisable to avoid the repeated use of in-custody informers.

9. Only in the most exceptional of cases will It be in the public interest for the Crown to proceed with a prosecution based solely upon the unconfirmed evidence of an in-custody informer. A prosecution must not proceed on this basis without the approval of both the Committee and the Director of Public Prosecutions.

10. As a result of providing information or evidence to the authorities, the personal safety of an in-custody informer is potentially at great risk. The prosecutor must advert to this potential for increased risk in assessing whether or not there is a compelling public interest in adducing an in-custody informer's evidence.

If the prosecutor concludes that there may be a compelling public interest in relying on the evidence of an in-custody informer at trial, the prosecutor must bring the matter to the attention of his or her Chief Crown Attorney who will determine whether the matter should be referred to the Committee for review. The role and operation of the Committee is described below, in Section F.

D. Restrictions on Dealing with In-Custody Informers

(1) Informer Privilege

The Supreme Court of Canada has affirmed the mandatory nature of informer privilege and its fundamental importance to the due administration of justice.[2] In the course of all dealings with in-custody informers, prosecutors must be mindful of the privilege and determine its operation in the context of each prosecution.

If an in-custody informer does not intend to testify or to make his or her statement known to the public, then the statement is protected by informer privilege. Prosecutors must consider the constraints created by this privilege in contemplating the disclosure of any information that could expressly or implicitly reveal the informer's identity.

While, technically, informer privilege belongs to the Crown, the Crown cannot waive the privilege without the informer's consent. The privilege is absolute and cannot be weighed against other competing interests. Once established, neither the police nor the court possesses the discretion to encroach upon the privilege.[3]

The only exception to the absolute nature of the privilege is the "innocence at stake exception." In order for this exception to apply, there must be a basis in the evidence for concluding that disclosure of the informer's identity is necessary to prove the innocence of the accused.[4]

There is also authority for the position that, if the in-custody informer waives privilege and testifies, he or she cannot be compelled to answer questions regarding other involvement with the police, as an informant, unless privilege is waived regarding that activity.[5]

Before disclosing or seeking a waiver in respect of an in-custody informer's statement, the prosecutor should advise the informer that he or she may have a privilege and encourage the informer to seek independent legal advice.

(2) Independent Legal Advice

Prosecutors must ensure that the in-custody informer is aware of the advisability of seeking independent legal advice with respect to the operation and waiver of informer privilege. In many cases in-custody informers will have counsel to assist them in respect of charges they face, or related matters. In such cases it is appropriate for the prosecutor and police to deal with the informer through counsel (to the extent that this is consistent with the informer's wishes). If the in-custody informer does not already have counsel, the prosecutor, with the informer's consent, should try to facilitate access to independent counsel. Where it is proposed that counsel be available to the witness by some special arrangement, the prosecutor should consult with his or her Chief Crown Attorney.

(3) Safety / Security Issues

As stated above, an in-custody informer may face increased safety risks. There may be cases where the degree of risk to the safety of an in-custody informer or an individual connected with the in-custody informer is acute enough that the public interest weighs against adducing the informer's evidence.

(4) Consideration Promised or Conferred

In assessing or agreeing to any promise or conferral of consideration, prosecutors must be mindful of the potential corrupting effect of exchanging testimony for any sort of benefit. The nature of the consideration sought, promised or conferred will inevitably reflect upon the reliability of the in-custody informer and the ultimate determination of whether there is a compelling public interest in adducing his or her evidence.

- No consideration should be offered in relation to future or, as of yet, undiscovered criminality.
- Where an agreement has been reached, any requests for additional consideration either during or after the in-custody informer's testimony at trial should be refused except for those necessarily incidental to consideration already promised or conferred.
- Where the informer is charged with any additional criminal offences prior to the completion of his or her testimony, the prosecutor should reassess the use of the in-custody informer as a witness, whether or not the informer seeks any new consideration. The commission of additional criminal offences may disentitle the in-custody informer to any consideration previously agreed upon, but not yet conferred.
- In circumstances where the in-custody informer is charged with additional criminal offences and/or seeks additional consideration, the prosecutor must notify his or her Chief Crown Attorney who will determine whether or not the In-Custody Informer Committee ought to reconsider the matter.
- If, in the course of proceedings relating to new criminal charges, the in-custody informer seeks additional consideration from the court for past co-operation, the prosecutor should advise the court that the informer was made aware that he or she could not expect additional consideration in relation to future or undiscovered criminality when the original agreement was reached. The presumption against mitigating future sentences in recognition of past cooperation for which the informer has already received consideration is subject to any measures connected with or deemed necessary to protect the in-custody informer's safety.
- Under no circumstances shall the conferral of consideration on an in-custody informer be conditional upon the conviction of the accused.

(5) Negotiating with In-Custody Informers

In negotiating with in-custody informers prior to trial, it is important for prosecutors to keep in mind that any direct contact with an informer may become the subject of some future *voir dire* or other proceeding. Accordingly, a prosecutor dealing with an informer should generally not be the prosecutor anticipated to conduct the prosecution.

E. Assessing the Reliability of the In-Custody Informer as a Witness

In-custody informer evidence requires a rigorous assessment of the informer's general reliability as well as his or her account of the accused's alleged statement. Accordingly, the factors listed in this section must be considered by the prosecutor as part of his or her assessment of compelling public interest prior to submitting the matter to the In-Custody Informer Committee. These factors shall also be considered by the Committee in determining whether or not there is a compelling public interest in calling the informer as a witness. In applying these criteria in individual cases, the prosecutor and the Committee must not only assess each item individually but must also consider the impact of the entire list of factors as a comprehensive group.

(i) The extent to which the statement is confirmed. "Confirmation" of evidence is not synonymous with corroboration. In the context of evidence from an in-custody informer, confirmation is credible evidence or information available to the Crown, independent of the in-custody informer, which significantly supports the position that the in-custody informer is telling the truth regarding the inculpatory aspects of the proposed evidence. Generally, one in-custody informer will not provide confirmation of another.

(ii) The detail contained in the alleged statement. The statement's reliability will be bolstered or decreased, depending on the degree to which it contains particular or unusual details relating to the offence. The reliability of the statement will also be enhanced where it leads to the discovery of evidence known only to the perpetrator.

(iii) The circumstances under which the alleged statement was made.

(iv) The degree of access that the informer may have had to external sources of information about the offence, such as media reports or the accused's copy of the Crown brief. The prosecutor should request that police investigate the informer's access to other sources of information.

(v) The in-custody informer's general character. The informer's character may be evidenced by his or her criminal record or disreputable, dishonest conduct known to the prosecutor or the police. Conversely, any evidence of good character will also be relevant to the informer's reliability.

(vi) Any relevant medical or psychiatric reports concerning the in-custody informer obtained by police in the course of their investigation. The prosecutor should ask the police whether they have conducted any investigation concerning any relevant aspects of the in-custody informer's medical or psychiatric history.

(vii) Any request the informer has made, whether agreed to or not, for consideration in connection with provision of the statement or an agreement to testify.

(viii) Any consideration, known to the prosecutor, offered to or conferred upon the informer by the authorities. Generally, consideration will be offered or conferred by the prosecutor or police. The prosecutor should request that police provide a written record itemizing any consideration that they have promised to or conferred upon the informer. Police or the prosecutor may be aware of consideration promised or conferred by other persons in authority such as correctional authorities. In such cases, this information should be taken into account in assessing the reliability of in-custody informer evidence.

(ix) Any information known to police or the prosecutor concerning previous efforts by the in-custody informer to trade testimony for consideration.

(x) Whether the informer has in the past given reliable information to police or prosecutors.

(xi) Whether the informer has given evidence in court in the past and any judicial findings in relation to the accuracy and reliability of that evidence.

(xii) Whether the informer has previously claimed to have received statements while in custody.

(xiii) Any safety measures known to the prosecutor that have been requested offered to or received by the informer in connection with his or her testimony.

(xiv) Whether the informer made some written or other record of the words allegedly spoken by the accused and, if so, when the record was made, and its availability.

(xv) The circumstances under which the informer's report of the alleged statement was taken. Examples of relevant circumstances would include whether the report was made immediately after the alleged statement and whether the in-custody informer has made more than one effort to exchange the particular statement for consideration.

(xvi) The manner in which the report of the alleged statement was taken by the police. The prosecutor should, for example, consider whether the police made a thorough report of the words allegedly spoken by the accused, and how thoroughly they investigated the circumstances which might suggest opportunity or lack of opportunity by the informer to fabricate a statement.

(xvii) Any other information that may attest to or diminish the credibility of the informer, including the presence or absence of any relationship or association between the accused and the informer.

F. In-Custody Informer Committee

(i) Role of the Committee

The role of the Committee is to provide guidance to the prosecutor and to determine whether or not there is a compelling public interest in relying on the evidence of an in-custody informer. Where the prosecutor is considering the utilization of an in-custody informer, he or she must conduct an independent assessment as to whether there is a compelling public interest in doing so. In some cases, the prosecutor may, as a result of that independent analysis, decide not to include the possible evidence of the in-custody informer in the prosecution case.

In those cases where the prosecutor is of the view that there may be a compelling public interest in relying on the in-custody informer, he or she must bring the matter to the attention of his or her Chief Crown Attorney. The Chief Crown Attorney will determine whether or not consideration of the matter by the Committee is warranted i.e. the Chief Crown Attorney must also agree that there may be a compelling public interest in presenting the informant's evidence to the court.

Where the prosecutor intends to rely upon the evidence of an in-custody informer in order to obtain a committal for trial, the Chief Crown Attorney will determine prior to the commencement of the preliminary inquiry whether the matter should be referred to the Committee for review. If the Committee approves the use of the informer at the preliminary inquiry, the Committee will reassess the use of the informer after the preliminary inquiry.

(ii) Composition of the Committee

The Committee shall be comprised of a Chairperson and four other members. The Chairperson of the Committee shall be a member of the Public Prosecution Service selected by the Director of Public Prosecutions, for a fixed term.

The Committee considering individual cases shall be comprised as follows:

1. The Chairperson;
2. The Chief Crown Attorney of the region where the charge was laid. If this Chief Crown Attorney has carriage of the prosecution, the Chairperson shall select a substitute for this committee member. The substitute shall be a Chief Crown Attorney, the Deputy Director of Public Prosecutions, or a

Senior Crown Counsel;

3. The Chief Crown Attorney of the Appeals Branch, or an experienced member of the Appeals Branch designated by the Chief Crown Attorney of the Appeals Branch;

4. The Chief Crown Attorney of a region or branch other than where the prosecutor with carriage of the case is located, selected by the Chairperson;

5. A Senior Crown Counsel, selected by the Chairperson.

(iii) Materials to be Submitted to the Committee

The prosecutor with carriage of the case shall provide the following written materials to the Committee:

1. A detailed synopsis of the allegations;
2. A summary of the anticipated evidence of the in-custody informer;
3. A summary of all the evidence the Crown proposes to rely upon at trial to assist the Committee in determining the significance of the in-custody informer evidence to the Crown's case;
4. An analysis of the informer's reliability, addressing the reliability indicia set out above, including any confirmatory evidence;
5. Any requests for consideration made by the in-custody informer and any consideration promised or conferred by the authorities in exchange for information or testimony pertaining to the offence (this would include any written agreement, if already in existence);
6. Antecedents of the informer, including:
   - the informer's criminal record,
   - medical or psychiatric reports, where relevant and in possession or control of the Crown,
   - prior history of reliability in dealing with the police and/or the courts, if known;
7. Any other information that the prosecutor believes is relevant to the Committee's review of the case or any further materials requested by the Committee.

In rare cases, exigent circumstances may prevent the prosecutor from providing the Committee with all of the enumerated items (1 through 6). Where exigent circumstances exist, the prosecutor must bring the matter to the attention the Chairperson of the Committee who will determine the adequacy of available material. The Committee will consider the materials submitted by the prosecutor as enumerated above, and will, unless precluded by exigent circumstances, invite the prosecutor to appear in person before the committee to discuss the issues relevant to the deliberations of the Committee. The prosecutor must not present in court the evidence of an in-custody informer without approval from the Committee.

(iv) The Decision of the Committee

Prosecutorial discretion may only be exercised in favour of adducing the evidence of the in-custody informer where the Committee has determined, by a majority of 4 out of 5 , that there is a compelling public interest in doing so. The Chairperson has a duty to ensure that the Committee acts in accordance with this policy. The deliberations of the Committee underlying its exercise of prosecutorial discretion in individual cases, however, are confidential and will not be disclosed. The position taken by individual committee members will not be disclosed.

Attached to this policy document (as Appendix "A") is a suggested draft memorandum from the Committee to the prosecutor with carriage of the case, informing the prosecutor of the decision of the Committee.

G. Agreements with In-Custody Informers

Prosecutors should ensure that any agreements made with in-custody informers relating to consideration in exchange for information or evidence are fully documented and in clear language. Such agreements are to be in writing and signed by the parties to the agreement.

Any agreement with an informer which involves immunity from prosecution must be in writing and must be signed by the parties to the agreement, and the Director of Public Prosecutions.

In exceptional circumstances, e.g. if the informer is illiterate, the agreement may be documented by having the parties to the agreement record the terms of the agreement on videotape or audiotape.

H. Disclosure Respecting In-Custody Informers as Witnesses

The dangers of using in-custody informers in a prosecution give rise to a heavy onus on the prosecutor to make complete disclosure. Complete disclosure is, of course, subject to informer privilege and safety considerations as set out above. Accordingly, the timing of disclosure is a matter that remains within the sound discretion of the prosecutor and requires careful consideration. The safety of an in-custody informer can be endangered if disclosure is made before authorities can attend to providing for his or her personal security. It will therefore be appropriate to confer with police and correctional authorities prior to making disclosure. Prosecutors may also wish to seek the input of the Chairperson of the Committee.

Without limiting the extent of the Crown's disclosure obligation, the following is a list of items that the prosecutor should review to ensure disclosure is both full and fair:

1. the criminal record of the in-custody informer including, where reasonably accessible to the police or prosecutor, the factual synopses relating to any convictions;
2. information concerning any new or additional criminal charges laid against the in-custody informer prior to the completion of his or her testimony at trial;
3. any medical or psychiatric reports concerning the in-custody informer where relevant and in possession or control of the Crown;
4. any information in the prosecutors's possession or control respecting the circumstances in which the informer may have previously testified as a Crown witness, including, at a minimum, the date, location and court where the previous testimony was given;
5. any information (including copies of the notes of police officers, corrections personnel or prosecutors who participated in, or were present) relating to negotiations or discussions with the informer, of any of the following matters:
   - (a) consideration sought by the informer or any person associated with the informer in exchange for the information or evidence at issue in the present case;
   - (b) any offers or promises made by the police or prosecutors to the informer or any person associated with the informer in exchange for the information or evidence at issue in the present case;
   - (c) any consideration already conferred upon the informer or person associated with the informer in exchange for the information or evidence at issue in the present case;
   - (d) any further consideration requested, offered, promised or received that is necessarily incidental to consideration already promised or conferred, and any additional consideration sought, promised or conferred beyond the scope of the original agreement to provide information or testimony;
6. safety measures requested, offered or promised to the in-custody informer on his or her own behalf or on behalf of another individual, with appropriate precautions taken to ensure that disclosure of the information will not itself jeopardize the safety of the in-custody informer;
7. any written or other record of an agreement respecting consideration for information or evidence of the in-custody informer in the present case;

8. the circumstances under which the in-custody informer and his or her information came to the attention of the authorities.

If the informer will not be called as a Crown witness a disclosure obligation still exists, subject to the informer's privilege. In most cases, the prosecutor, after having first sought police input, will be able to at least disclose the fact that the information exists.

I. Prosecution of Informer for Giving False Statements

Where a prosecutor becomes aware of evidence indicating that an in-custody informer has knowingly, with the intent to mislead, made a false statement in respect of a material fact, the prosecutor must refer the matter to his or her Chief Crown Attorney or, where the Chief Crown Attorney has carriage of the case, to the Deputy Director of Public Prosecutions, who will in turn refer the matter to an outside police agency for investigation. Where the investigation results in the laying of a charge, the case should be referred to an independent prosecutor for advice and prosecution. The purpose of prosecuting in-custody informers who attempt (even unsuccessfully) to falsely implicate an accused is, amongst other things, to deter like-minded members of the prison population.

J. Other Practice Suggestions.

(1) Prosecutors should instruct the investigating police officers to liaise with custodial officials to help ensure that the placement of informers is such that the risk of inter-witness contamination is minimized.

(2) When the evidence of an in-custody informer is tendered, prosecutors should suggest that the court utilize a strong "Vetrovec" warning (see *Vetrovec v. The Queen*, [1982] 1 S.C.R. 811).

[1] (1991), 68 C.C.C. (3d) 308 (S.C.C.)

[2] *Regina v. Leipert* (1997), 112 C.C.C. (3d) 385 (S.C.C.)

[3] *supra*, at 392-39

[4] *supra* at 394-395

[5] *Regina v. Bisaillon v. Keable* (1983), 7 C.C.C. (3d) 385 (S.C.C.); *R. .v. Jack Heyden and William Vanderheyden*, (September 15, 1997), unreported (Ont.Ct.Gen.Div.); *R. v. Newsome* (November 29, 1996), 33 W.C.B. (2d) 120, [1996] Alta.D.Crim.Conv. 5436-01

CONFIDENTIAL MEMORANDUM

FROM: XXX YYY
Chairperson, In-Custody Informer Committee

TO: AAA BBB
Crown Attorney

RE: R. v. CCC DDD
In-custody informer: EEE FFF

DATE: day/month/year

Please be advised that the In-custody Informer Committee has considered the issue of whether or not a compelling public interest exists for the presentation of the evidence of EEE FFF, an in-custody informer, at the forthcoming trial of CCC DDD.

It is the decision of the Committee that, at this point in time, there is no compelling public interest which would justify the presentation of the evidence of EEE FFF at this trial. Accordingly, the evidence of EEE FFF cannot be presented in court.

c.c. DPP
Chief Crown Attorney

If approving utilization of the informer, the last paragraph would be as follows:

It is the decision of the Committee, based on the information available at this time, that a compelling public interest exists which justifies the presentation of the evidence of EEE FFF at this trial. Accordingly, the evidence of EEE FFF may be presented in court. This is not a direction to utilize that evidence.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

INTERVIEWING WITNESSES
(Other than Experts or the Police)

NATURE OF DOCUMENT:	PRACTICE NOTE
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THIS POLICY DOCUMENT IS TO BE READ IN THE CONTEXT PROVIDED BY THE **PREFACE** TO THIS PART OF THE MANUAL.

CERTAIN WORDS AND PHRASES HAVE THE MEANINGS ESTABLISHED IN THE **"WORDS & PHRASES"** SECTION OF THIS PART OF THE MANUAL.

Interviewing Witnesses[1]
(Other than Experts or the Police)

Proper preparation for trial often requires that victims and other important witnesses be interviewed by the prosecutor. Indeed, establishing an appropriate rapport with vulnerable or sensitive witnesses may be essential to eliciting the information necessary to support a charge. Such interviews, however, must be conducted with great care, and in controlled circumstances. Prior to trial, unnecessary contact with witnesses should be avoided. If casual contact occurs, the case in which the witness is involved cannot be discussed. Prosecutors must always guard against inadvertently influencing the testimony of any witness in a manner which might be considered to be improper.

It is also of the utmost importance that witness interviews be conducted in circumstances which will preclude any allegation that the prosecutor may have improperly influenced the witness. When such allegations arise, it may be necessary to hold a voir dire in order to demonstrate that the prosecutor did not improperly influence the witness. This sort of voir dire usually requires that an independent counsel be retained to examine or cross-examine the prosecutor involved. The prosecutor may also require counsel. This process, besides being inconvenient and embarrassing, may undermine a trial.

Ideally, a Crown Attorney would have an observer present at all witness interviews. This is simply not possible, having regard to the finite police and prosecution resources which are available. Interviews of the following types of witnesses, however, should be conducted with extra care :

- a witness 16 years of age or younger, who is the victim of a crime of violence (including any sexual assault), or who has observed a crime of violence;
- a witness to any serious crime, if that witness is the sole observer of the material events;
- any witness who the Crown Attorney has reason to believe is, or may become, "adverse", as defined in the *Canada Evidence Act*.

In regard to the above-noted witnesses, the interview should be conducted in the presence of an appropriate third party, preferably a police officer. That third party should make a record of the interview sufficient to prevent or rebut allegations of impropriety.

The following additional principles should guide the interview process in regard to all civilian witnesses:

1. The witness should be advised that it is his or her own honest recollection of

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[1] The PPS is grateful to the Ontario Ministry of the Attorney General for making available its Practice Memorandum [2002] No. 11, which was a valuable resource in developing this Note.

events that is important. The memory of the witness may be refreshed by his or her prior statements. If the witness is aware that there is evidence which conflicts with his or her recollection, the witness should be assured that it is his or her own honest and independent recollection that is important, and that he or she is free to disregard the other evidence.

2. Witnesses should be interviewed separately.

3. There should be no suggestion to the witness that the evidence of the witness is expected to conform with the prosecution theory. The prosecutor should avoid leading questions and should not otherwise indicate to the witness that a particular answer is desired.

4. Where the prosecutor believes that a witness may be honestly mistaken, the prosecutor may inquire into the circumstances surrounding the present recollection of the witness.. The prosecutor should not tell the witness that he or she is wrong.

5. If the witness appears to be deliberately untruthful, the prosecutor may properly confront the witness in regard to apparent discrepancies, and may request a clarification or explanation.

6. **Where a witness provides information which differs from previous statements or which is not contained in previous statements, that information, along with the general circumstances in which the information came to light, must be disclosed in accordance with the Public Prosecution Service policy on disclosure.** Where feasible to do so, the new or different information should be reduced to writing or otherwise accurately recorded.

7. Prosecutors should not conduct investigative interviews. If a matter arises during the interview process which requires investigation, the prosecutor should not pursue the matter further at that time but should request that the police conduct whatever investigation may be necessary.

NovaScotia
PUBLIC PROSECUTION SERVICE

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NOTE:

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CHARGES OF PUBLIC NUDITY – CRIMINAL CODE SECTION 174

Section 174 of the Criminal Code provides that everyone who, without lawful excuse, is nude in a public place is guilty of an offence punishable on summary procedure. This Section also states that no proceedings may be commenced under this provision without the consent of the Attorney General. In Nova Scotia, "Attorney General" includes the DPP and, generally, it is the DPP who must consent to such proceedings. The purpose of this policy document is to help clarify the principles governing the granting or denial of this consent, and to establish the basic procedure for dealing with cases which require this consent.

Consideration of alternatives.

Before seeking the consent of the DPP to proceed under Section 174, prosecutors should first review the alleged criminal conduct to determine whether or not the matter can appropriately be addressed through prosecution under provisions which do not require the consent of the DPP. When it is clear that an appropriate alternative exists, that course should be followed. If, for example, the alleged conduct has a sexual context and is viewed by a person less than fourteen years old, Section 173 of the Criminal Code should be utilized. If there is uncertainty in regard to the efficacy of particular charges, or if it is the view of the prosecutor that proceedings under Section 174 may be appropriate, the case should be referred to the Chief Crown Attorney.

Evidential assessment by the Chief Crown Attorney.

If the Chief Crown Attorney concludes that proceedings under Section 174 may be appropriate, the Chief Crown Attorney shall determine whether or not the evidential threshold for a charge under Section 174 is met. As established in the Policy on The Decision to Prosecute, this involves a determination of whether or not there is sufficient evidence to provide a realistic prospect of conviction should the case proceed to trial. It should be noted that consideration of the evidential threshold includes an assessment of whether or not any defences plainly open to the accused can be overcome. Certain nude persons, e.g. models posing for bona fide artists, may have a lawful excuse for being nude. If satisfied that the evidential threshold is met, the Chief Crown Attorney will forward the matter to the DPP for consideration

Assessment of the Public Interest by the DPP.

In exercising discretion to grant or deny consent, the DPP will determine, on a case by case basis, whether or not the public interest is best served by proceeding. The assessment of the public interest usually involves the balancing of many factors. The nature of those factors, and their relative importance, will vary in every case.

Some of the factors which are routinely considered, and which are not unique to cases involving public nudity, are these:

- the availability of alternatives to prosecution;
- the prevalence of the alleged offence in the community;
- any history of unlawful conduct by the alleged offender;
- the sentencing options available upon a finding of guilt; and
- the apparent gravity or triviality of the incident.

Various other factors, some of which are peculiar to cases of public nudity, may also be considered. This would include such matters as the reaction of bystanders or the sensibility of the owners of nearby property. The DPP, however, is required to maintain the broadest possible perspective, and to make decisions in the **public** interest.

In exercising the discretion granted in Section 174, the DPP must also be guided by the jurisprudence relating to charges of public nudity, and precedents in Nova Scotia and elsewhere involving the exercise of this discretion. Those precedents clearly demonstrate that the DPP should show great restraint in the granting of consent to proceeding under these provisions. Generally, citizens ought not to face the serious sanction of a criminal conviction unless the alleged conduct amounts to aggressive exhibitionism.

The principles emerging from jurisprudence and precedents which are pertinent to the granting or denial of consent by the DPP may be summarized as follows:

- consent will usually **not** be granted when the nudity occurs at an isolated or secluded location;

- consent will usually **not** be granted unless a warning has been given to the alleged offender by police or an authorized enforcement agency, and there is blatant or repeated disregard of such a warning;

- consent will usually be granted in instances of aggressive exhibitionism;

- consent will usually be granted when nudity is accompanied by lewd behaviour or indecent acts involving the alleged offender, or others (assuming that the matter cannot be adequately addressed through prosecution under other provisions).

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

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PRIVATE PROSECUTIONS
- INTERVENTION BY ATTORNEY GENERAL

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PRIVATE PROSECUTIONS*
INTERVENTION BY THE ATTORNEY GENERAL

General

The Attorney General of Nova Scotia has common law and statutory authority to intervene in a private prosecution. Historically, the power to intervene in a private prosecution has been exercised with restraint. The following policy is intended to reflect that practice and establish procedures for cases where an intervention is being considered.

Responsibility for the Decision to Intervene

The Director of Public Prosecutions, as lawful Deputy of the Attorney General, will decide whether the power to intervene and stop a private prosecution should be exercised.

The local Crown Attorney, as agent of the Attorney General, will decide whether the power to intervene and assume carriage of a private prosecution should be exercised.

Standard to be met for Intervention

The Director of Public Prosecutions may intervene and stop a private prosecution where she/he is satisfied, based upon a review conducted in accordance with the procedures set out herein, that the proceedings are frivolous, vexacious, an abuse of the criminal process or not in the public interest.

The local Crown Attorney will intervene and assume carriage of a private prosecution where, based upon a review conducted in accordance with the procedures set out herein, she/he is satisfied that it is necessary, in the public interest, that she/he do so and that there is a realistic prospect of conviction.

The authority to intervene and stop a private prosecution and the authority to intervene and assume carriage of a private prosecution will be exercised with restraint and only in the clearest of cases.

Interim Intervention

The Director of Public Prosecutions may, where appropriate, intervene to stay a private prosecution to allow time for a review to be conducted in accordance with the procedures set out herein.

*Note: This policy is under review (2002).

Initiation of a Review

Where the person who is the subject of the complaint requests the intervention of the Attorney General, or where in the opinion of the Director of Public Prosecutions, it is appropriate to do so, a review will be initiated to determine whether the prosecution should be stopped.

Where the complainant in a private prosecution requests that the Public Prosecution Service intervene and assume carriage of the prosecution, a review will be initiated.

Conduct of a Review

The Director of Public Prosecutions or his delegate will conduct the review to determine whether to stop a prosecution.

The local Crown Attorney will conduct the review to determine whether to assume carriage of a prosecution.

The person conducting the review, where necessary, will:

(1) obtain copies of all relevant, available documentation;

(2) attempt to obtain the views, in writing, of the complainant and the person who is the subject of the complaint;

(3) where a police investigation of the matter giving rise to the private prosecution has been conducted, obtain a copy of the police report;

(4) where no police investigation of the matter giving rise to the private prosecution has been conducted, request the police to investigate the matter and file a report;

(5) attempt to obtain such other statements or information as deemed relevant to the review.

Decision whether to Intervene

In cases where a review is conducted to determine whether to stop a private prosecution, the person conducting the review will make a recommendation, in writing, to the Director of Public Prosecutions whether to intervene. The Director will make the decision whether to intervene and stop the prosecution.

In cases where a review is conducted to determine whether to intervene and assume carriage of a private prosecution, the decision will be made by the local Crown Attorney.

Notice of Decision

A decision to intervene in a private prosecution will be reduced to writing and sent to the Attorney General, the complainant, the person who is the subject of the complaint and, where applicable, the investigating police agency.

Where the decision to intervene is made by the local Crown Attorney, notice to the Attorney General of the decision should be sent to the appropriate Chief Crown Attorney, who will forward the notice to Head Office.

NovaScotia
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

REFERRALS TO THE RESTORATIVE JUSTICE PROGRAM (CROWN ENTRY POINT)

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RESTORATIVE JUSTICE PROGRAM: GUIDELINES TO CROWN ATTORNEYS RESPECTING REFERRALS AT THE CROWN ENTRY POINT

1. DEFINITIONS AND AUTHORIZATION

The Nova Scotia Restorative Justice Program, as set out in the document *Restorative Justice: A Program for Nova Scotia*, Department of Justice, June 1998, has been authorized by the Attorney General for Nova Scotia pursuant to section 717 of the *Criminal Code* and section 4 of the *Young Offenders Act*. The full document is available at the web site of the Nova Scotia Department of Justice **(ww.gov.ns.ca/just)**.

In that document the term "Entry Point" is defined at page 8, "Minimum Requirements" and "Discretionary Factors" at page 14, and "Levels of Offences" at page 16. Crown Attorneys should be familiar with the provincial Pre-charge and Post-charge Restorative Justice Protocols issued by the Attorney General for the implementation of the Program.

Only Level 1 and Level 2 offences may be referred to the Restorative Justice Program by the police or the Crown. During Phase 1 and Phase 2 of the Restorative Justice Program only young offenders will be eligible for referral. Adults will be eligible for referral in Phase 3 and Phase 4 of the Program.

2. POLICE RESPONSIBILITIES

There is a presumption that every Level 1 or Level 2 offence which cannot be adequately dealt with by either an informal warning or formal caution by the police will be referred by the police directly to a Community Agency if the circumstances meet the Minimum Requirements and Discretionary Factors. These referrals will be made without a charge being laid and without any involvement of the Crown.

In every case in which a young offender has committed a Level 1 or Level 2 offence, the police will be required to complete a checklist of Minimum Requirements and Discretionary Factors. If the police consider a referral to be appropriate, they will send the checklist with the referral portion completed and other supporting documents directly to the Community Agency. If the police consider it an inappropriate case to refer, they will still complete the checklist stating thereon their reason(s) for not making the referral, lay a charge, and send it with the usual Crown package for prosecution.

3. CROWN RESPONSIBILITIES

a. Police Uncertainty

The Crown normally should not receive a prosecution package on a Level 1 or Level 2 offence accompanied by a recommendation from the police that the Crown refer the case to the Restorative Justice Program. If the police considered it an appropriate case for referral they should have referred it. The charge may be withdrawn and the file returned to the police to make the referral. Where the Crown deems it appropriate he/she may refer the matter directly to a Community Agency.

b. Crown Review

The role of the Crown in the referral process is to have a second look at the appropriateness of a case for referral. In most cases where the police have decided against a referral, it will be obvious from a perusal of the checklist that their decision is the appropriate oe. Sometimes, however, the Crown may simply disagree with the decision to not make a referral, and a referral may be made directly by the Crown.

There can be a change in circumstances, such as an offender who only accepts responsibility for the offence after the police have laid a charge, and the discretion to refer is with the Crown. Crown Attorneys must also be mindful that some referrals may not have been made at the Police Entry Point because the police officer misunderstood the referral criteria or simply did not believe in restorative justice. The Crown Attorney must exercise his or her independent judgement and refer the case if he or she feels a referral is appropriate, having considered the Minimum Requirements and Discretionary Factors.

c. Consultation with Police

In any case where a Crown Attorney is considering making a referral which the police had decided against, the Crown Attorney must consult with the police so that each will understand the thinking of each other. If, after reviewing the case with the police, the Crown Attorney decides that the case is an appropriate one for referral, he or she may or may not withdraw the charge, refer the case directly to a Community Agency and advise the police accordingly.

d. Post-referral Prosecution

A case which has been referred to a Community Agency at the Crown Entry Point may return to the Crown office for a number of reasons:

i. In cases where the Community Agency, based on new information regarding the Minimum Requirements and Discretionary Factors, deems a referral to be inappropriate for the Restorative Justice Program, it may issue a notice of reconsideration to the Crown;
ii. In cases where the participants at a restorative justice forum are unable to reach a consensus regarding a restorative justice agreement for the offender, the Community Agency may refer the case back to the Crown; and
iii. In cases where the offender fails to satisfactorily comply with the terms of the restorative justice agreement, the Community Agency shall ensure that formal notice to that effect be sent to the Crown.

In the event that a case is returned to the Crown office, prosecution is by no means automatic, and should happen only if a Crown Attorney determines that it is in the public interest. The usual issues regarding whether to prosecute should be considered. The scope of a restorative justice agreement is wider than that of the remedies provided in the formal justice system. People should not be prosecuted as a result of a breach of a restorative justice agreement if the term breached was not one which could have been imposed by disposition or sentence in the formal system. In the event of a partial completion of the restorative justice agreement, particular reference should be made to section 717 of the *Criminal Code* and section 4 of the *Young Offenders Act*. Note that section 721 *et seq.* of the *Criminal Code* and section 14(2)(c)(iv) of the *Young Offenders Act* provide that the Court may be made aware of the default.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

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SEXUAL OFFENCES - PRACTICE NOTE

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SEXUAL OFFENCES - PRACTICE NOTE

A list of matters to be considered when an accused is found guilty of (or pleads guilty to) sexual offences*:

1. Request a **presentence report** under section 721 of the *Criminal Code* or under section 40 of the *Youth Criminal Justice Act*.

   Unless the background of the offender has been fully explored during a trial, a presentence report is generally desirable in sexual offence cases. It is essential that the court have as much information as can be made available in regard to the factors that influence the behaviour of the offender.

2. If sentencing is to occur on a future date and the offender is not in custody, review the **release conditions** to ensure that they are adequate. It may be necessary to seek a fresh order under section 523 (2)(a) for the release or detention of the offender.

   By the time that the accused is found guilty, circumstances will have changed from those which prevailed at the bail hearing. The accused is no longer presumed innocent and there is no longer any doubt in regard to the strength of the Crown's case. The accused may be sensing that a substantial term of imprisonment is looming, not far ahead. The release conditions must be able to ensure that the accused will attend for sentencing. The conditions must also ensure the safety of the public, including the victim and the accused himself/herself. There may be a new basis for a condition that the offender stay away from certain places or persons (similar to the terms of an order under Section 161).

3. Consider the desirability of a **sexual offender assessment** at the East Coast Forensic Psychiatric Hospital (ECFPH).

   There is very little chance of success in the treatment of deviant and sexual behaviour if the offender is not matched to the appropriate mode of treatment at the appropriate level of intensity. This cannot be achieved without a comprehensive assessment such as is done at the ECFPH by the Provincial Sexual Offender Assessment and Treatment Program. If such an assessment is appropriate in the case before the court, the court should be informed that the PPS is prepared to complete the necessary referral documents.

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* This Practice Note relates to proceedings under these sections of the Criminal Code:

Sec.151 (sexual interference)
Sec.152 (invitation to sexual touching)
Sec.153 (sexual exploitation)
Sec.153.1 (sexual exploitation of disabled)
Sec.155 (incest)
Sec.159 (anal intercourse)
Sec.160 (bestiality)
Sec.163 (corrupting morals)
Sec.163.1 (child pornography)
Sec. 167 (immoral theatrical performance)
Sec.168 (making obscene material)
Sec.170 (parent procuring sexual activity)
Sec.171 (householder permitting sex activity)
Sec.172 (corrupting children)
Sec.173 (indecent act)
Sec.174 (nudity)
Sec.175 (indecent exhibition)
Sec. 271 (sexual assault)
Sec.272 (sexual assault with a weapon)
Sec.273 (aggravated sexual assault)

Such an assessment, for adults, requires the consent of the accused. (The assessment can be ordered for young persons at any stage of the proceedings --see section 34 of the *Youth Criminal Justice Act*.) In order for the medical professionals to conduct a valid, comprehensive assessment, it is essential that the offender consent to all components of the assessment as outlined in the consent form.

Sample referral and consent forms are attached to this Practice Note, along with a description of the assessment and treatment components of the Provincial Sexual Offender Assessment and Treatment Program.

If the accused adult consents to the assessment, the prosecutor should request an order that the sexual offender assessment be provided to the court as part of the presentence report per section 721(4).

4. Ascertain whether or not the victims have been advised of the opportunity to prepare a **victim impact statement** and be prepared to inform the court of this in response to the mandatory inquiry to be made under section 722.2.

   Consider whether or not it would be appropriate to seek an adjournment to permit the victim to prepare a victim impact statement, and consider the best mode of presenting the information from the victim (see section 722).

5. Consider whether an order under section 161 should be requested, to **limit contact with children**.

   These orders are available if the offender has been found guilty of any of the following offences in respect of a person under the age of 14 years:

   section 151 (sexual interference), section 152 (invitation to sexual touching), section 155 (incest), section 159 (anal intercourse), subsections 160(2) or 160(3) (bestiality), section 170 (procuring sexual activity), section 171 (permitting sexual activity), section 271 (sexual assault), section 273 (aggravated sexual assault), or section 281 (abduction).

6. For designated offences, seek an order under Section 487.051 for the taking of bodily substances for the purpose of **forensic DNA analysis**.

   The following sexual offences are **primary designated offences** (mandatory order):

   section 151 (sexual interference), section 152 (invitation to sexual touching), section 153(sexual exploitation), section 155 (incest), section 212(4) (offences in relation to juvenile prostitution), section 271 (sexual assault), section 272 (sexual assault with a weapon), section 273 (aggravated sexual assault).

The following sexual offences are **secondary designated offences** (court has option):

> section 160(3) (bestiality in the presence of a child), section 163.1 (child pornography), section 170 (parent or guardian procuring sexual activity, section 173 (indecent acts).

7. Request a mandatory **firearms prohibition** order under section 109(1)(a) if violence against a person was used, threatened or attempted, and the offence for which the accused was found guilty was one for which the accused may have been sentenced to imprisonment for 10 years or more.

   If the offender was found guilty of an offence with a lesser maximum punishment, and violence against a person was used, threatened or attempted, consider whether or not an order should be sought under section 110.

8. Request a **forfeiture order** under section 491 in regard to any weapons used in the offence.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

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THE ECFPH SEXUAL OFFENDER TREATMENT PROGRAM

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The Sexual Offender Treatment Program at the East Coast Forensic Psychiatric Hospital (ECFPH)

The following outline is based on material prepared by Dr. Angela Connors, Manager, Community Sexual Offender Program of the ECFPH. It is intended to provide practical assistance to prosecutors in dealing with sexual offenders.

A. Likelihood of Success of Treatment

There is a great deal of controversy in the literature regarding how well sexual offender treatment works. One thing that is certain is that there is very little chance of success if the offender is not matched to the appropriate mode of treatment offered at the appropriate level of intensity.

a. Treatment Intensity Level

All community-based sexual offender programs are offered at a low-moderate level of intensity. Programs of moderate-high intensity are only possible in residential settings such as correctional institutions and private treatment hospitals available in the USA. In Canada, adult male sexual offenders are able to access moderate-high intensity treatment primarily within CSC operated penitentiaries.

b. Matching the Offender

Essentially, treatment is most likely to work if the level of deviancy of the offender is matched to the level of intensity. Given the level of intensity of community-based sex offender programs, offenders who attend must be low-moderate risk. Although a formal risk assessment is necessary to fully elucidate recidivism risk levels, there are "red flags" that can clearly identify an individual as inappropriate for community-based sexual offender treatment. For example:

1. Deniers

Individuals who completely deny that they perpetrated a sexual crime should not be sent to community-based sexual offender treatment. Low-moderate intensity programs are not equipped to effectively address entrenched denial in a sexual offender. Programs demonstrating effective treatment of deniers are institutionally based high intensity programs that require an average of two years to produce results (e.g., O'Donahue & Letourneau, 1993). Other researchers have shown that it takes a minimum of four months of intensive treatment specifically directed toward breaking denial for an individual who denies his sexual offenses to be ready for treatment aimed at reducing recidivism (also intensive and residential in nature) (e.g., Schlenk & Shaw, 1996). This is not practical to address in a low-moderate intensity program that only runs for approximately six months in total. Moreover, deniers have been documented as disrupting a treatment group, potentially leading to decreased gains for the rest of the offenders attending (e.g., see Barker & Beech, 1993). Low-moderate intensity community-based programs are only equipped to effectively address the minimizer or rationalizer (e.g., "I raped her but I never beat her up; I touched her vagina, but not as many times as she said; I touched her, but I never had intercourse", etc.)

2. Psychopaths

If there is any indication that an individual is a psychopath, for example, from past evaluations, under no circumstances should he be sent to community-based treatment. Psychopathy is a personality constellation that is both treatment resistant and positively correlated with risk for continued violent offenses. It requires intensive treatment specifically developed to address psychopathy in addition to sexual deviancy. Research indicates that inappropriate treatment with psychopaths actually increases risk of recidivism by up to 33% [e.g., Hemphill & Wang (1991); Rice, Harris & Cormier (1992).] Certainly, none of us want to be in the business of promoting increased risk to the public.

3. Entrenched Deviancy

Evidence of entrenched sexual deviancy is a contraindication to inclusion in community-based sexual offender treatment. Entrenched sexual deviancy is demonstrated by factors such as evidence of more than two victims during his lifetime and/or prior failure of sexual offender treatment. These individuals require moderate-high intensity treatment. If these individuals were to be placed in a program whose intensity was not sufficient to address their treatment needs, their deviancy could be stimulated as opposed to treated. Again, increased risk to the community is not the goal we hope to achieve.

If a sexual offender is sentenced to community-based sexual offender treatment, and he has one or more of these characteristics, he will be denied treatment by our service. Thus, we would then be in the unfortunate circumstance of sharing the community with offenders who are TOO HIGH RISK to be included in community-based treatment. They will receive neither treatment nor the increased monitoring inherent in the treatment process, yet be allowed access to the community. If we could treat them in the community, we would. Not only do we lack the resources to attempt such an endeavour, but there is a good argument for not placing sexual offenders under the pressure and time commitment of intensive treatment without the support and structure of a residential setting.

Often, there are over 250 sexual offenders serving community-based sentences under the supervision of Probation Services in the Province of Nova Scotia. A substantial proportion of those offenders are currently awaiting assessment and treatment services; therefore, our wait list is considerable. In order for there to be enough time to process a referral, assess him, and then await the start of the next closed six-month sex offender program in his area, two years can easily pass. Moreover, it is after the treatment process that the offender attends Maintenance Group and is able to solidify the gains that he made in treatment into daily habits that reduce his overall likelihood of reoffense. This process is crucial to the success of the treatment process. Therefore, we recommend a three year order for all sexual offenders serving community-based sentences for whom treatment will be ordered.

B. Risk Assessment

Risk assessment should only be undertaken by a registered psychologist specifically trained in the field of forensic psychology and risk assessments. This is not a generalist skill for psychologists. The ECFPH has recently entered into an agreement with the PPS to provide risk assessments on a fee for service basis.

C. Treatment Delivery

The research conducted on sexual offenders thus far shows that cognitive behavioral group treatment programs utilizing a relapse prevention perspective have had the most consistent positive outcome results. Only programs following this model should be considered an appropriate fulfillment of the treatment order. Individual therapy is typically contraindicated because group-based treatment has shown more success addressing issues of minimization, rationalization and secrecy (e.g., "pretend normal"), than has individual therapies. Treatment aimed at issues other than sexual deviancy, although beneficial to the offender, should also not be expected to decrease recidivism.

Currently, the Department of Justice in Nova Scotia has circumvented the problems inherent in non-standardized services and untrained professionals by contracting ECFPH to oversee assessment services provided to sexual offenders under their supervision. Similarly, the Department of Health has contracted ECFPH to oversee the treatment services provided to sexual offenders in the community. Currently services overseen by ECFPH are provided by trained personnel from a research-based best practice model.

D. Recommended Wording for a Treatment Order

"Attend, as agreed, at the East Coast Forensic Psychiatric Hospital for Sexual Offender Assessment.

Note: This wording captures all aspects of the process:

Assessment = define the problem;

Treatment = develop skills to address the problem;

Maintenance = practice and solidify skills in a supportive environment;

Related programs = other problems that are increasing risk for sexual reoffense as identified by the risk assessment process (e.g., relationship issues, sexual orientation confusion, etc.).

E. Recommended Wording Where the Offender is Ordered to Pay for his Assessment/Treatment

"That you shall pay $ .00 to the Clerk of the court at ______ for the benefit of the East Coast Forensic Psychiatric Hospital to cover all or part of the cost of your sexual assessment, treatment and maintenance. The said payment will be made as follows..."

Wording representing our current practice is as follows:

"Incur the full cost of all assessment services for sexual deviancy (including penile plethysmography), unless determined to be in a position of hardship by probation services."

Note: There is a longstanding theoretical basis for expecting greater progress and commitment to the process of change when the individual has invested monetarily in the change process himself (e.g., see Mayer & Norton, 1981; Tudor, 1998).

F. Suggested Additional Conditions for Pedophiles (i.e., target 0-11 year olds):

(a) "Prohibited from attending a public park or public swimming area where persons under the age of fourteen years are present or can reasonably be expected to be present, or a daycare centre, schoolground, playground or community centre;" [see s.161(1)(a)CCC] and,

(b) "Prohibited from seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer in any capacity, that involves being in a position of trust or authority towards persons under the age of fourteen years;" [see s.161(1)(b)CCC] and,

(c) "Not to have any contact, whether direct or indirect, with children under the age of fourteen years unless accompanied by a supervising adult who is aware of both the offender's sexual offenses and crime cycle and has been approved by his probation officer. This prohibition includes, but is not limited to, attendance at family functions, shopping centres and the like."

G. Suggested Additional Conditions for Hebaphiles (i.e., target 11-18 year old adolescents):

(a) "Prohibited from attending a public park or public swimming area where persons under the age of eighteen years are present or can reasonably be expected to be present, or a daycare centre, schoolground, playground or community centre;" and,

(b) "Prohibited from seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer in any capacity, that involves being in a position of trust or authority towards persons under the age of eighteen years;" and,

(c) Not to have any contact, whether direct or indirect, with children under the age of eighteen years unless accompanied by a supervising adult who is aware of both the offender's sexual offenses and crime cycle and has been approved by his probation officer. This prohibition includes, but is not limited to, attendance at shopping centres and the like."

H. Suggested Additional Conditions for Incest Offenders (target 0-11 year old family members):

(a) "Absolutely no children under the age of fourteen years allowed to reside in the same abode as the offender, even when a supervising adult approved by his probation officer is present;" and,

(b) "Prohibited from seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer in any capacity, that involves being in a position of trust or authority towards persons under the age of fourteen years;" [see s.161(1)(b)CCC] and,

(c) "Not to have any contact, whether direct or indirect, with children under the age of fourteen years unless accompanied by a supervising adult who is aware of both the offender's sexual offenses and crime cycle and has been approved by his probation officer. This prohibition includes, but is not limited to, any children under the age of fourteen years in the family either by blood relative or by marriage."

I. Suggested Additional Conditions for Incest Offenders (target 11-18 year old family members):

(a) "Absolutely no children under the age of eighteen years allowed to reside in the same abode as the offender, even when a supervising adult approved by his probation officer is present;" and,

(b) "Be prohibited from seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer in any capacity, that involves being in a position of trust or authority towards persons under the age of eighteen years;" and,

(c) "Not to have any contact, whether direct or indirect, with children under the age of eighteen years unless accompanied by a supervising adult who is aware of both the offender's sexual offenses and crime cycle and has been approved by his probation officer. This prohibition includes, but is not limited to, any children under the age of eighteen years in the family either by blood relative or by marriage."

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OVERVIEW

The Sex Offender Registration Act (SOIRA, "the Act"), in force as of December 15, 2004, establishes a database designed to assist peace officers in the investigation of sexual offences. The database is to contain addresses, descriptions, and other vital information relating to convicted sex offenders, and is accessible to investigators as soon as they become aware of the commission of a sexual offence. Investigators are able to search the database by location, within a radius of any specific address or geographical area. Crown Attorneys, except in very narrow circumstances, do not have access to the database information.

When a sex offender is convicted, the Crown, as outlined in this policy document, is to apply to the court for an order under SOIRA, and the court, as soon as possible after sentencing, shall issue an order directing the offender to report to a designated registration centre. There, the offender is to provide the personal information specified in the Act. The information is to be updated regularly by the offender, and this obligation continues for 10 years, 20 years, or life, depending on the maximum penalty for the offence upon which the conviction is registered. Failure to comply with the terms of a SOIRA order is a new offence under the *Criminal Code*.

The court may exempt an offender from SOIRA obligations only if the court is satisfied that the impact of the obligations would be "grossly disproportionate to the public interest in protecting society though the effective investigation of crimes of a sexual nature" to be achieved through SOIRA.

The Act also has retrospective application. Convicted sex offenders serving sentences when the Act is proclaimed in force will be served with notices requiring them to attend registration centres and provide the specified information. These offenders may apply to any court for an exemption, but must meet the same test for exemption as applies to other offenders. Retrospective application of the Act will be managed by a specialized working group of Crown Attorneys, trained and instructed in regard to the relevant provisions of the Act.

KEY ASPECTS OF SOIRA, and POLICY CONSIDERATIONS

Applications for SOIRA Orders

The process of issuing an order requiring an offender to provide information to the database established under SOIRA begins with the prosecutor making an application to the court when an offender is convicted of a "designated offence". Offenders who are granted absolute discharges under s. 730 of the *Criminal Code* are not subject to SOIRA orders. The Act also does not apply to "young persons", unless they are tried in ordinary court (YOA), or are given an adult sentence (YCJA).

"**Designated offences**" are listed in s. 490.011 of the *Criminal Code*. The list includes all sexual offences, and any attempts or conspiracies to commit sexual offences. The list also includes offences such as breaking & entering, abduction, trespassing at night, manslaughter and murder if the Crown establishes beyond a reasonable doubt that the offender committed the offence with the intent to commit a sexual offence [CC s. 490.012(2)].

Once the prosecutor applies for a SOIRA order, the court shall issue the order unless the offender can place himself within the exemption provision, noted below.

Cases in which the prosecutor should apply for a SOIRA Order

The intent of Parliament in developing the SOIRA registry was to facilitate the investigation of sexual offences by giving the police a database which would provide early leads in an investigation. The effectiveness of this important new tool will be affected by the completeness of the information in the database. The legislation anticipates that very few convicted offenders will be exempted from the database. Accordingly, **prosecutors are to apply for SOIRA orders for all eligible offenders, except in truly exceptional circumstances**. Truly exceptional circumstances will exist when it is clear that a properly instructed court would find that the offender fits within the statutory exemption i.e. the impact of the order would be **grossly disproportionate** to the public interest in protecting society through the effective investigation of sex crimes, to be achieved by the registration of information under SOIRA [CC s. 490.012 (4)].

When faced with a fact situation which apparently includes a relatively low level of violence, or an offender with no known criminal background, prosecutors should bear in mind that sex offenders often act in a pattern of escalating violence over time. It is also possible that a particular investigation may have uncovered only "the tip of the iceberg" in regard to dangerous sexual conduct. Failure to seek an order in such circumstances could expose the public to danger by delaying the apprehension of offenders.

Resolution discussions and agreements

To help ensure the integrity and completeness of the SOIRA database, the decision to apply or not apply for a SOIRA order must not become a bargaining chip in the plea or charge resolution process. Possible avoidance of a SOIRA order must not be a factor in charge selection or in the position taken on sentence. Prosecutors should also be careful not to agree to a statement of fact drafted in support of a guilty plea if the facts, when presented in court, will not prove the intent of the accused to commit an offence of a sexual nature.

Identifying eligible cases

It is anticipated that when the police deliver a Crown Sheet relating to a sexual offence to the Crown Attorneys' Office, it will have a notation indicating SOIRA eligibility (in most cases, an appropriate box will be ticked). When a Crown file is opened for an eligible case, the cover of the file should be stamped "SOIRA", or otherwise be clearly noted for eligibility.

SOIRA orders are to be made in Form 52, samples of which have been made available to Crown Attorneys' Offices. A draft order in Form 52 should be prepared and placed in the file when it is opened. The duration of the order depends upon the maximum penalty for the predicate offence, as follows [CC s. 490.013(2)]:

- for summary offences, or indictable offences punishable by 5 years imprisonment or less, the order ends 10 years after it was made;
- for offences punishable by 10 or 14 years imprisonment, the order ends 20 years after it was made;
- for offences punishable by life imprisonment, the order lasts for life.

The first prosecutor to review the file should confirm eligibility and ensure that the draft order has been prepared and that the duration of the order matches the offence.

> Note: Nova Scotia has 8 SOIRA registration centres. The offender is required to report to the registration centre that serves the area in which his/her main residence is located. A list of centres will be given to the offender when the order is made. The location of the centre does not appear in the draft order.
>
> [The offender may appeal the making of an order based on a question of law or mixed fact and law. The offender may apply for a termination of obligations after 5 years for a "10-year " order, after 10 years for a "20-year" order, and after 20 years for a lifelong order (CC s. 490.015).]

Making the application

The application for a SOIRA order may be made orally, and, generally, it would be appropriate to make the application at the same time that an application is made for a DNA sample order, if such an order is being sought. The court is to make the SOIRA order "as soon possible after it imposes a sentence" [CC s. 490.012].

It is anticipated that some offenders will endeavor to avoid the registry by arguing that they fit within the "grossly disproportionate" exemption described in s. 490.012(4) of the *Criminal Code*. Until jurisprudence is developed relating to SOIRA, prosecutors should be familiar with the cases which arose in regard to a similarly worded exemption in the DNA data bank legislation–see s. 487.051(2) of the *Criminal Code*, and related cases. [Under the heading "Anticipated Legal Issues", near the end of this document, there is a discussion of this issue.]

Restrictions on use of SOIRA information

There are safeguards in SOIRA to protect the privacy interests of sex offenders and to facilitate the rehabilitation and reintegration of offenders into the community as law-abiding citizens. As far as is possible, the only use of the database is to be by police investigators who reasonably believe that a sexual offence has been committed. Disclosure of database information (or the fact that the information is in the database) to others, including Crown Attorneys, is strictly controlled by the Commissioner of the RCMP.

Prosecutors cannot obtain SOIRA information, except as is permitted under s.490.03 of the *Criminal Code*. The exceptions are as follows:

- If the Commissioner is satisfied that it is necessary, information may be disclosed to a prosecutor applying for a Form 52 order.
- If the Commissioner is satisfied that it is necessary, information may be disclosed to the Attorney General in proceedings to terminate SOIRA orders, or in proceedings relating to an exemption from a retrospective SOIRA order.
- If, in a proceeding, a person who is subject to a SOIRA order discloses the registered information (or the fact that such information is registered), the Attorney General may request and receive all of the registered information.

Once the prosecutor or the Attorney General receive the SOIRA information in the circumstances stated above, the information may be disclosed to the court in the proceedings for which it was requested, and to appeal courts [CC s.490.03(3)].

Information from the database may also be disclosed to a judge or justice in an application for a search warrant in a sexual offence investigation [CC s.490.04(4)]. The prosecutor, if aware of the application for a search warrant, should advise the applicant to seek a sealing order in regard to the disclosed information.

It is an offence under SOIRA to consult any SOIRA information without authorization, or to disclose information in the database except as permitted by SOIRA [see SOIRA, s. 15(3) and s. 15 (4)].

Criminal Code offences created

Failure to comply with a SOIRA order, without reasonable excuse, is an offence under s. 490.031 of the *Criminal Code*. In the case of a first offence, it is punishable on summary conviction by a fine of $10,000 or 6 months imprisonment, or both. For second and subsequent offences, the charge is hybrid. By indictment, the punishment is a fine of up to $10,000, and imprisonment for up to 2 years, or both.

Anticipated legal issues

As noted previously, when an application for a Form 52 Order is made it can be expected that some offenders will oppose the making of the order by seeking exemption under section 490.012(4). The offender must establish that the granting of the order would have an impact on him which would be grossly disproportionate to the public interest in protecting society through the effective investigation of crimes of a sexual nature, to be achieved by the registration of his/her personal information under SOIRA..

Some arguments which may be expected to be advanced by defendants are these:

1. The offence is a minor, insignificant act compared to other obviously dangerous offences/ persons.

2. The reporting requirement is a punishment that is cruel and unusual and tends to brand the defendant as a sex offender.

3. The requirement to provide detailed and private information violates Section 7 of the *Charter of Rights and Freedoms*.

4. Registration requirement is an unwarranted response to a distorted picture of sex offenders/offences.

5. There has actually been a decrease in sexual crimes since 1993.

6. It is a myth that all sex offenders re-offend.

7. The serious crimes are a small percentage of sexual offences.

8. The Registry system would be an expensive duplication of existing systems.

9. Registration would promote a false sense of security in the public mind.

10. Registration would be a needless involvement of many individuals in the justice system and thus undermine treatment programs by diverting monetary and person resources away from treatment.

11. The public and certain interest groups will increasingly demand greater access to the registry database

The jurisprudence relating to sex offender registries is very limited at this point in that the only Canadian sex offender registry scheme to be in operation before 2004 is in Ontario. The Ontario scheme is under judicial scrutiny at this time via the case of ***R. v. Dyck,*** *[2004] O.J. No. 2842* (Quicklaw cite), a decision of Hearn, J. Of the Ontario Court of Justice issued June 30, 2004, presently under appeal. Referred to in that decision are the cases of ***R. v Murrins,*** *162 CCC (3d) 412 (N.S.C.A.)*, and ***R. v Beare,*** *45 CCC (3d) 57 (S.C.C.)* which are helpful on specific issues.

The extensive *viva voce* evidence of experts and the written material considered by Hearn, J. demonstrate the sort of presentation that the prosecutor might make when confronted with the arguments listed above. The trial judge was able to conclude that:

1. Sex offences are prevalent, particularly among women and children and they have a substantial impact upon the victims.

2. Sex offenders, as a group, are prolific in offending.

3. Sex offenders commit crimes within close proximity to their own homes.

4. Time is usually of the essence, particularly in cases involving child abduction.

5. Sex Offender Registry data provides an invaluable investigative tool.

6. Registration itself can be a deterrent, particularly for offenders who are no longer subject to parole or probationary supervision.

7. No other system currently provides current and updated address information of offenders of the prescribed sexual offences.

8. Registry information would provide a useful tool to ensure police investigation is quick and efficient and thus promote public and community safety.

In the case of ***Murrins***, the issue was whether a DNA Order ought to be made. This case is useful for the argument that the order is not a further sanction but a furtherance of the state's legitimate interest in solving crimes; that the taking of the sample was a gathering of information, albeit a form of seizure ; that the order was not automatic in that the Court had to be satisfied that it was in the best interests of justice and therefore there was not a Section 7 Charter violation.

In ***Beare***, the issue was the requirement to submit to fingerprinting prior to conviction. The useful finding in this case is that such a scheme is an invaluable tool of criminal investigation and of great assistance in the judicial process.

While in the ***Dyck*** case the Ontario legislation was found to be unconstitutional based on a Charter Section 7 argument, it is easily distinguished because of the major differences between the Ontario act and the *Sex Offender Information Registration Act*. Hearn, J. found the Section 7 violation because the act was "unnecessarily broad and going beyond what is needed to accomplish the government objective" [para 118] and "more importantly, the legislation fails to accord with the principles of fundemental justice....by neglecting to provide for procedural fairness in the process requiring registration." [para 124]. Herne, J. conducted an analysis of the "not yet in force" *Sex Offender Information Registration Act* and concluded that it indeed clearly addresses to a great extent the issues and arguments made by the defendant in ***Dyck*** [paras. 101-111].

SEX OFFENDER INFORMATION REGISTRATION ACT
DESIGNATED OFFENCES

DESIGNATED OFFENCES s. 490.011(1)(a)			
Offence	**10 yr. Requirement**	**20 yr. Requirement**	**Life Requirement**
151 - sexual interference	Summary conviction	Indictable 10 yr. max	
152 - invitation to sexual touching	Summary conviction	indictable 10 yr. max	
153 - sexual exploitation	Summary conviction/indictable 5 yr. max		
153.1 - sexual exploitation of a disabled person	Summary conviction/indictable 5 yr. max		
155 - incest		Indictable 14 yr. max	
160(3) - bestiality presence of child	Summary conviction	Indictable 10 yr. max	
163.1 - child pornography	Summary conviction	Indictable 10 yr. max	
170 - parent or guardian procuring sex act	Indictable 5 yr. max		
172.1 - luring child use of computer	Summary conviction/indictable 5 yr. max		
173(2) - exposure	Summary conviction		
212(1)(l) - stupefying for purpose of sex		Indictable 10 yr. max	
212(2) - living on avails prostitution		Indictable 14 yr. max	
212(2.1) - aggravated offence		Indictable 14 yr. max	
212(4) - obtaining prostitution of person under 18	Indictable 5 yr. max		
271 - sex assault	Summary conviction	Indictable 10 yr. max	
272 - sex assault with weapon/cause BH		Indictable 14 yr. max	
273(2)(a) - aggravated sex assault (use firearm)			Indictable max life imprisonment
273(2)(b) - aggravated sex assault			Indictable max life imprisonment
273.3(2) - removal of child from Canada	Summary conviction/indictable 5 yr. max		

SEX OFFENDER INFORMATION REGISTRATION ACT
DESIGNATED OFFENCES

DESIGNATED OFFENCES s. 490.011(1)(b)			
Offence	**10 yr. Requirement**	**20 yr. Requirement**	**Life Requirement**
173(1) - indecent acts	Summary conviction		
177 - trespassing at night	Summary conviction		
230 - murder in commission of offence			Indictable max life imprisonment
234 - manslaughter			Indictable max life imprisonment
246(b) - overcoming resistence			Indictable max life imprisonment
264 - criminal harassment	Summary conviction	Indictable 10 yr. max	
279 - kidnapping			Indictable max life imprisonment
280 - abduction person under 16	Indictable 5 yr. max		
281 - abduction person under 14		Indictable 10 yr. max	
348(1)(d) - B & E dwelling			Indictable max life imprisonment
348(1)(e) - B & E other	Summary conviction	Indictable 10 yr. max	

	Place	Designated Area
1.	Baddeck RCMP Detachment 16 Hillcrest Drive - PO Box 400 Baddeck, NS B0E 1B0 Telephone (902) 295-2350	Inverness, Richmond, Victoria Counties, and Membertou and Eskasoni Reserves
2.	Bible Hill RCMP Detachment 283 Pictou Road - Bible Hill PO Box 1585 Truro, NS B2N 5V3 Telephone (902) 893-6820	Colchester, Cumberland Counties, and Hants County East of Highway 101
3.	Bridgewater RCMP Detachment 14 Pinegrove Road - Cookville PO Box 4000 Bridgewater, NS B4V 3V3 Telephone (902) 527-5555	Lunenburg and Queens Counties
4.	Cape Breton Regional Police Service Central Division 865 Grand Lake Road Sydney, NS B1P 6W2 Telephone (902) 563-5095	Cape Breton Regional Municipality, other than Membertou and Eskasoni Reserves
5.	Halifax Regional Police 1975 Gottingen Street Halifax, NS B3J 2H1 Telephone (902) 490-6500	Halifax Regional Municipality
6.	New Glasgow Police Service 225 Park Street New Glasgow, NS B2H 5B7 Telephone (902) 1941	Antigonish, Guysborough and Pictou Counties
7.	New Minas RCMP Detachment 18 Jones Road New Minas, NS B4N 3N1 Telephone (902) 679-5555	Annapolis and Kings Counties, and Hants County East of Highway 101
8.	Yarmouth Rural RCMP Detachment 156 Starrs Road - PO Box 5050 Yarmouth, NS B5A 4K6 Telephone (902) 742-9106	Digby, Shelburne and Yarmouth Counties

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

INVESTIGATION AND PROSECUTION OF CASES INVOLVING PERSONS WITH SPECIAL COMMUNICATION NEEDS

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PROTOCOL FOR INVESTIGATION AND PROSECUTION OF CASES INVOLVING PERSONS WITH SPECIAL COMMUNICATION NEEDS

Statement of Purpose:

This protocol is designed to guide criminal justice officials in the full and comprehensive investigation and prosecution of cases involving persons with special communication needs. Persons with special communication needs are those individuals who, because of age, level of literacy, mental or physical disability are unable, without assistance, to fully access the criminal justice system or understand or be understood by officials thereof.

Abbreviations and Definitions:

"**v/w**" means victim or witness with special communication needs.

"**support person**" means a person who is well-known and trusted by the v/w and may include family, friend or service provider employed by the v/w, group home, institution or government. This person may assist by providing personal and emotional support and in many cases by providing assistance in communicating.

Statement of Principles:

1. All v/w are entitled to full, fair and equal access and participation in the criminal justice system.

2. The effort of criminal justice officials to compensate for the needs of the v/w must be directly proportionate to the needs of the v/w; i.e., the greater the needs, the greater the effort to assist.

3. Every reasonable effort is to be made by criminal justice officials to provide the v/w with an interpreter or special equipment or other assistance as required. (see Appendix A).

Police:

1. Upon receipt of a complaint where either the victim or a witness has special communication needs, the police are to conduct a prompt, detailed and thorough investigation.

2. When, in dealing with a v/w, the police are unable to obtain a statement due to the

special communication needs of the v/w, the police are to:

- (a) arrange a time and place to conduct an interview;
- (b) arrange for a support person to be present;
- (c) if the support person cannot assist with communication, arrange for an interpreter to be present;
- (d) if necessary, arrange for the use of special equipment or other assistance as required.

3. If appropriate, the support person for a v/w should be permitted to be present during the interview regardless of whether an interpreter is also present.

4. Regardless of the age of the v/w whenever possible, the interview with the v/w is to be audio-taped and/or video-taped.

5. The police investigator is to maintain possession of any video-tape or audio-tape of the interview of the v/w.

6. Any request of the Police by the accused or defence counsel to view the tape is to be referred to the Crown. When authorized by the Crown, the police are to arrange a time and place for the defence counsel and the accused to view the tape.

7. The police are to keep the v/w and where appropriate, the support person, informed about the progress of the case.

8. If, at any stage, the investigation is discontinued, the v/w or where appropriate, the support person, is to be promptly informed of that fact and the reasons therefor. In addition, the police are to specify, in the police file, the reason(s) for discontinuing the investigation.

9. The police officer who commences the investigation involving a v/w is to remain on the case through to its conclusion unless circumstances make it impossible.

10. Where a person suspected of committing an offence has special communication needs, the police, before conducting an interview with the suspect are to:

    - (a) if appropriate, allow a support person to be present during the interview;
    - (b) take all reasonable steps to ensure that the suspect understands his/her rights and has full opportunity to exercise those rights; and
    - (c) take all reasonable steps to ensure that the suspect and the investigator are able to communicate and understand each other and if they do not, arrange for an interpreter to be present;
    - (d) where a support person or interpreter is present for the interview, the investigator should ask him/her to sign a statement indicating that it appeared to them that the accused understood his/her rights and the questions posed by the investigator.

Crown:

1. When asked by the police for advice as to whether the evidence collected is capable of constituting reasonable and probable grounds for a charge, or, where a charge has been laid, when deciding whether to continue the prosecution, the Crown is to:

    (a) assess the v/w's ability to communicate their evidence;
    (b) assess the v/w's understanding of the nature of an oath or solemn affirmation;
    (c) assess the v/w's understanding of what it means to promise to tell the truth;
    (d) assess the v/w's statement (which may be written, audio-taped or video-taped) and if the statement is inadequate, request the police re-interview him/her or personally interview the v/w;
    (e) consider the potential evidence of the v/w in combination with all of the other evidence. (It may not be necessary for the evidence of the v/w to be strong if the other Crown evidence is sufficient); and
    (f) consider the views of the v/w, and where appropriate, the views of the support person, the police investigator, the social workers or other persons involved with the v/w.

2. Prosecution of cases involving a v/w should be pursued wherever sufficient evidence exists unless public interest considerations dictate otherwise. Where a decision is made not to prosecute, the reasons therefor are to be discussed with the v/w and, where appropriate, the support person. Such discussion should be held before the prosecution is stopped. In addition, the reasons for stopping the prosecution are to be stated in the Crown file.

3. Whenever a charge is laid which involves a v/w, the Crown, as soon as practicable, is to meet with the v/w for the purpose of:

    (a) get re-acquainted with the v/w;
    (b) discussing the Court process in a manner appropriate to the abilities of the v/w; and
    (c) making a preliminary assessment of the v/w's communication abilities and needs.

4. At any meetings between the Crown and the v/w, a support person is to be permitted to attend if so desired by the v/w unless this interferes with the Crown Attorney's preparation of the case. Also, at such meetings, all interpreters or special equipment necessary or other assistance as required to enable the Crown to understand the v/w is to be used.

5. The Public Prosecution Service will place a high priority on ensuring that a Crown Attorney is assigned to a case involving a v/w at the earliest opportunity and remains

with the case until it is concluded.

6. In all cases involving a v/w, the Crown will ensure that the v/w and, where appropriate, his or her support person, is kept informed of the status of the case.

7. In preparing for a Court hearing wherein a v/w is going to testify, the Crown, unless it is inappropriate, will meet with the v/w within a week of the hearing to:

   (a) get re-acquainted with the v/w;
   (b) re-discuss the Court process;
   (c) if possible and appropriate, show the v/w the Courtroom;
   (d) re-assess the v/w's ability to communicate their evidence;
   (e) Re-assess the v/w's understanding of the nature of an oath or solemn affirmation;
   (f) re-assess the v/w's understanding of what it means to promise to tell the truth;
   (g) review the v/w's anticipated evidence;
   (h) prepare the v/w for cross-examination. It is important for v/w's to know the truthful answer is always the right answer.
   (i) prepare the v/w for possible not guilty verdict.

8. On the day of the Court hearing, the Crown is to make reasonable efforts to ensure that the v/w has a private and comfortable place to wait before going into the Courtroom to testify.

9. When a v/w is testifying, the Crown will take every reasonable step to attempt to ensure that the v/w is able to be understood by the presiding judge (jury). Without intending to restrict the intent of the foregoing statement, the Crown is to, where appropriate:

   (a) make a request for the exclusion of the public [s.486(1) C.C.C.];
   (b) make a request for non-publication of information which may tend to disclose the identity of the v/w [s.486(3) C.C.C.];
   (c) make use of interpreters or special equipment or other assistance as required to aid in enabling the v/w to be understood;

   (d) call an expert witness to explain the special communication needs of the v/w. If the ability of the v/w to testify is challenged, the Crown is to consider calling an expert on the voir dire relating to this issue.

10. The Crown, in cases involving a v/w is to make every reasonable effort to obtain an early Court date.

11. The Crown will ensure that wherever reasonable and appropriate, the concerns of a v/w or his/her support person regarding the accused's release pending trial or views regarding sentencing are communicated to the Court.

12. The Crown will advise victims with special communication needs, in appropriate

cases, of the provisions of the **Compensation for Victims of Crime Act**. The Nova Scotia Criminal Injuries Compensation Board telephone number is 424-4651.

13. Where a sentence has been imposed, the Crown Attorney is to explain the sentence imposed by the Judge to both the victim with special communication needs and the support person.

14. In the event of an appeal, the Crown Attorney conducting the appeal is to advise the victim with special communication needs and the support person of the fact an appeal has been commenced and advise of the outcome once the appeal has been heard.

APPENDIX "A"

The following organizations are capable of providing communication assistance or directing criminal justice officials to the communication resource required.

1. **Nova Scotia Association for Community Living**
   (formerly known as Canadian Association for the Mentally Retarded)

   contact: Mary Rothman phone: 469-1174

2. **Canadian National Institute for the Blind (C.N.I.B.)**

   contact: Guy Woodland phone: 453-1480

3. **Society of Deaf and Hard of Hearing**

   contact: Dawn LeBlanc phone: 422-7130
   phone: 423-3353
   (after hours)

4. **Department of Community Services**

   Contact local, regional or district offices.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

SPOUSAL/PARTNER VIOLENCE

NATURE OF DOCUMENT:	DPP DIRECTIVE
Includes	AG DIRECTIVE (Appendix"A" - p.8)
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SPOUSAL / PARTNER VIOLENCE

INTRODUCTION

This policy is intended to amplify and support the pro-arrest, pro-charge, and pro-prosecution Directive of the Minister of Justice Regarding Spousal/Partner Violence. Crown Attorneys shall follow this policy together with the Directive of the Minister of Justice Regarding Spousal/Partner Violence which is attached hereto as Appendix "A".

It is in the public interest that victims of spousal/partner assault receive efficient, effective and equitable treatment in the justice system. The purpose of this statement of policy and procedure is to assist Crown Attorneys with their responsibilities when dealing with spousal/partner assault prosecutions. The Public Prosecution Service recognizes the need for a community based multi-disciplinary response to spousal/partner violence and hopes that this policy will aid in the development of local protocols.

POLICY

For the purpose of this policy statement, spousal/partner violence refers to all forms of violence or abusive behaviour, between persons who are or have been legally married, who are or have been in a common law relationship or who are or have been dating. Spousal/partner violence includes sexual and physical assault, threats of violence and criminal harassment.

This policy statement recognizes the unique, volatile and emotionally charged nature of spousal/partner violence. Crown Attorneys should give these offences a high priority in recognition of their serious nature and the destructive effect of the cycle of violence.

I. Arraignment

1.0 Where the accused is brought to Court in custody, the Crown Attorney should:

(a) in appropriate cases, make representations in support of a request that the accused not be released on bail;

(b) in cases other than those described by paragraph (a), make representations in support of a request that the accused, while on bail be subject to appropriate conditions including a "no contact" provision.

1.1 In situation 1.0 (a) above, the Crown Attorney should consider the advice of the police officer and shall consider the information provided by the officer in respect
to the following when making representations in support of a request the accused not be released on bail:

(a) the history of violence or threats of violence by the accused against the complainant/victim;

(b) the history of violence or threats of violence by the accused against others;

(c) the nature of the threat or assault;

(d) the presence, use or threat of use of weapons;

(e) the involvement of alcohol or drugs;

(f) the apparent mental health status of the accused;

(g) the presence of children during the alleged offence;

(h) the concerns of the complainant/victim; and

(i) the criminal record of the accused.

1.2 In situation 1.0 (b) above, the Crown Attorney should consider the advice of the police officer and shall consider the information provided by the officer in respect of the following when making representations in support of a request that the accused while on bail be subject to conditions:

(a) the history of violence or threats of violence by the accused against the complainant/victim;

(b) the history of violence or threats of violence by the accused against others;

(c) the nature of the threat or assault;

(d) the presence, use or threat of use of weapons;

(e) the involvement of alcohol or drugs;

(f) the apparent mental health status of the accused;

(g) the presence of children during the alleged offence;

(h) the concerns of the complainant/victim; and

(i) the criminal record of the accused.

2.0 The Crown Attorney should make all reasonable efforts to obtain an early court date for all cases involving spousal/partner violence.

3.0 Where the accused is released on bail by the court at arraignment, the Crown Attorney should:

(a) as soon as practicable, inform the investigating police force that there are conditions of release and advise that they should forthwith inform the complainant/victim of the conditions of release and that they should provide the complainant/victim with a copy of the release order as soon as possible; or

(b) as soon as practicable, inform the Victims' Services Officer and request that they forthwith inform the complainant/victim of the conditions of release and that they should provide the complainant/victim with a copy of the release order as soon as possible; or

(c) as soon as practicable, inform the complainant/victim of the terms of release and provide the complainant/victim a copy of the release order as soon as possible.

4.0 The Crown Attorney shall prosecute cases of spousal/partner violence in accordance with the Directive of the Director of Public Prosecutions regarding the exercise of prosecutorial discretion [see the core policy entitled "The Decision to Prosecute" in the Crown Attorney Manual]. Applications for judicial interim release shall include a request for a "no contact" or other protective order in all appropriate cases. This request should state that there be no contact directly or indirectly with the complainant/victim unless the contact is initiated by the complainant/victim. For breaches of such orders, a request should be made to revoke bail and detain the accused in custody using the reverse onus provisions of the Criminal Code.

4.1 Where a complainant/victim initiates a request to vary a "no contact" condition, the Crown Attorney, before agreeing to any variation, should consider all the circumstances of the request, and where in the judgment of the Crown Attorney it is necessary in the interests of justice to do so, the Crown Attorney should facilitate the placing of the undertaking or recognizance on the court docket. The complainant/victim should then describe under oath all of the circumstances of the request.

5.0 The Crown Attorney shall prosecute without delay all violations of court orders intended to ensure the safety of the complainant/victims of spousal/partner violence.

II. Trial

1.0 Wherever the Crown Attorney is satisfied that a realistic prospect of conviction exists in a spousal/partner violence case, the Crown Attorney shall pursue the prosecution of charges unless public interest considerations dictate otherwise.

1.1 The decision not to carry on with a prosecution is a decision for which the prosecutor is accountable. Prior to coming to such a decision, the prosecutor should consult with the investigating police officer, and wherever possible, should also consult with the Chief Crown Attorney for the region, or his delegate. Where a decision is made to discontinue a prosecution for public interest considerations, those reasons should be stated in open court unless it is inappropriate to do so. In regard to all cases which are discontinued, the reasons for discontinuing the case are to be noted in the Crown file and the regional Chief Crown Attorney is to be notified that the case has been discontinued.

1.2 There are a number of opportunities the Crown Attorney can take to interview the complainant/victim both before and after the arraignment, but in any case, the Crown shall provide an opportunity to the complainant/victim and other witnesses to meet with the Crown Attorney prior to the trial.

1.3 The Crown Attorney shall refer the complainant/victim to the Victims' Services Division of the Department of Justice.

Procedure Upon Recantation of the Complainant/Victim:

1.4 The concerns of the complainant/victim are a proper public interest consideration. However, because of the societal interest in addressing the problem of spousal/partner violence, this factor alone is not a sufficient basis upon which to discontinue a prosecution.

1.5 When faced with a complainant/victim recantation, that factor alone is not sufficient to discontinue a prosecution. The Crown Attorney in those circumstances should consider the following:

(a) conducting inquiries or requesting the police conduct inquiries into the background of the recantation to determine its cause;

(b) meeting with the complainant/victim and advising of support services which might assist during the court process;

(c) instructing the police to take a statement from the complainant/victim concerning the recantation.

(d) assessing the strength of the Crown's case and likelihood of conviction in light of the recantation with particular attention to the S.C.C. decision in ***R. v. K.G.B.*** (1993), 79 C.C.C. (3d) 257; The use of this decision in appropriate cases will allow the Crown Attorney to use the complainant/victim original statement to police as evidence in court;

(e) the Crown Attorney should, when a complainant/victim recants on the witness stand, in appropriate cases invoke the provisions of section 9 (2) of the Canada Evidence Act;

2.0 The complainant/victim's testimony should be supported to the extent possible through the use of other evidence.

3.0 Where a complainant/victim fails to appear in Court in response to a subpoena, the Crown Attorney should take such steps, as in the opinion of the Crown Attorney, are necessary to ensure that the Crown retains control and appears to retain control over the prosecution. It is of paramount importance that no one, particularly the complainant/victim and/or the accused, perceives that the criminal process can be frustrated by the complainant/victim failing to respond to a subpoena. Where the complainant/victim fails to respond to a subpoena, the Crown Attorney should consider the following options:

(a) requesting an adjournment;

(b) requesting a warrant and, where appropriate, requesting that it be held for sufficient time to determine the reason the complainant\victim failed to appear. Obtaining a warrant is not intended to punish the complainant/victim for being reluctant to testify, but rather as a means of keeping the prosecution alive in the hope of protecting the complainant/victim in the short and long terms;

(c) entering a stay of proceedings [see "Stays of Proceedings" policy];

(d) offering no evidence. Since the decision to offer no evidence amounts to a discontinuation of the prosecution, this decision should be made in accordance with the principles set out in 1.0 and 1.1 above.

III. Sentencing

1.0 The impact of a crime on a complainant/victim is a relevant and important sentencing consideration.

2.0 Unless the Crown Attorney is aware that it has already been done, the Crown Attorney should inform the complainant/victim (or request the investigating police force to inform the complainant/victim) that information regarding the impact of the crime on the complainant/victim provided to the police or the Crown Attorney may be submitted to the court by the Crown Attorney.

3.0 Prior to speaking to sentence, the Crown Attorney shall consider the concerns of the complainant/victim on sentencing and where possible, advise the complainant/victim of the Crown Attorney's proposed recommendation.

4.0 Where the Crown Attorney is seeking a term of incarceration, the Crown Attorney, should consider asking the sentencing Judge to endorse the Warrant of Committal with a recommendation that the offender receive treatment while incarcerated.

5.0 Where the Crown Attorney is seeking a term of incarceration of two years or less, the Crown Attorney should consider recommending that a period of probation with appropriate conditions* be imposed in addition to the period of incarceration.

6.0 Where firearms have been used in the commission of the offence, the Crown Attorney should seek a firearms prohibition order or forfeiture of the weapons pursuant to the provisions of the **Criminal Code.**

7.0 Where the Crown Attorney is not seeking a term of incarceration the Crown Attorney should consider recommending a period of probation with appropriate conditions.*

8.0 The Crown Attorney after the sentence hearing should:

(a) as soon as practicable: (i) inform the investigating police force of the sentence, (ii) advise that the investigating officer should forthwith inform the victim of the sentence and (iii) where probation is imposed request that the investigating officer provide the victim with a copy of the probation order and the name and number of the probation office; or

(b) as soon as practicable: (i) inform the Victims' Services Officer of the sentence, (ii) request that they forthwith inform the victim of the sentence and (iii) where probation is imposed that they provide the victim with a copy of the probation order and the name and number of the probation office; or

(c) as soon as practicable: (i) inform the victim of the sentence and (ii) where probation is imposed, provide the victim a copy of the probation order and the name and number of the probation office.

**** Crown Attorneys should consider the need for conditions that protect the victim and the availability of treatment programs for the offender. Treatment programs available across the province are attached as Appendix "C".***

IV. Appeal Proceedings

1.0 The Crown Attorney handling the appeal should inform the investigating police force or Victims' Services Officer of:

(a) any notice of appeal;

(b) any bail order pending the hearing of the appeal;

(c) the date of the appeal hearing;

(d) the outcome of the appeal, and request that the investigating police force or

Victims' Services Officer notify the complainant/victim of:

(1) any notice of appeal;

(2) any bail order pending the hearing of the appeal;

(3) the date of the appeal hearing;

(4) the outcome of the appeal.

APPENDIX "A"

DIRECTIVE OF THE MINISTER OF JUSTICE ON SPOUSAL/PARTNER VIOLENCE

The Framework for Action Against Family Violence represents Government's commitment to improve the response of the justice system to this serious social problem. It is in the public interest that the justice system responds swiftly and effectively to reports of spousal/partner violence. Accordingly, the Minister of Justice issues the following Directive to ensure the implementation of a pro-arrest, pro-charge, pro-prosecution policy.

Application:

Spousal/partner violence refers to all forms of violence or threats of violence between current or former spouses or partners in a relationship, whether it be a marriage, common-law or dating relationship. It can include physical, emotional and economic threats, including threats to children, pets, property, stalking, harassment and every other form of violence.

1. The police are to respond to and fully investigate all complaints of spousal/partner violence. The parties are to be interviewed separately. Written and signed statements should be obtained from the victim/complainant and witnesses as soon as practicable. Comprehensive evidence (e.g. photographs, diagrams, witness accounts) shall be gathered to reduce reliance on victim testimony.

2. Police shall ascertain the presence of weapons and determine whether seizure of weapons is warranted.

3. The alleged assailant shall be arrested immediately in all cases where the police officer has reason to believe that there will be a continuation or repetition of the offence (including a violation of a 'no contact' order, peace bond, civil restraining order or release condition) or if other grounds for arrest are present. Where the police officer releases the alleged assailant on an undertaking (Form 11.1), that undertaking shall contain a 'no contact' and other protective conditions appropriate to the circumstances.

4. The police officer shall lay a charge where there are reasonable and probable grounds to believe that an offence has been committed. The police officer's decision to lay charges will depend upon the evidence available and not upon the wishes of the victim/complainant. Where the police officer lays a charge, the officer is to inform both the victim/complainant and the accused that the victim/complainant cannot withdraw the charge. The withdrawal of charges is the sole responsibility of the Crown Attorney.

5. Safety of the victim is of paramount concern. Where charges are, or will be, laid pursuant to an incident of spousal/partner violence, police shall notify the appropriate victim support service by the most expedient method at the earliest

opportunity. If the police officer believes that children in the home are in danger of physical or emotional abuse, the officer shall notify Children and Family Services.

If required, safe transportation of the victim to a transition house or secure residence shall be provided or arranged by the investigating police officer. Victims shall be kept informed regarding the progress of the case, including information regarding release conditions and sentencing provisions.

6. Police are to consult the Crown Attorney at the earliest possible stage with respect to the prosecution of the charge. A police officer is to provide advice to the Crown Attorney regarding continued custody or conditions of bail upon the first appearance of the accused.

7. In appropriate circumstances, a court may order a peace bond. The violation of a peace bond is a criminal offence. Where a person bound by a peace bond violates the term of the peace bond, police are to treat such violation in the same manner as a breach of a term of bail.

8. Court staff shall give priority to cases of spousal/partner violence. Court staff shall ensure that orders of the court are prepared and distributed to appropriate persons (i.e. victim, police, Victims' Services, accused, etc.) as soon as possible.

9. Where the Crown Attorney prosecutes cases arising from incidents of spousal/partner violence, the matters will be heard in the Provincial Court. A peace bond application and charges under Section 266(b) of the Criminal Code in relation to an assault between a husband and wife may be heard in Family Court when it is heard in conjunction with other matters before the Family Court involving the same parties. The definition of 'husband' and 'wife' in the Family Court Act includes persons living together as husband and wife for a period of at least one year.

10. The Crown Attorney should make every reasonable effort to obtain an early court date for all matters involving spousal/partner violence.

11. Crown Attorneys will prosecute a spousal/partner violence charge whenever they are satisfied that sufficient evidence exists regardless of the victim's/complainant's wishes, unless public interest considerations dictate otherwise. The Crown shall provide an opportunity to the complainant/victim and other witnesses to meet with the Crown Attorney prior to the trial. The Crown Attorney shall refer the complainant/victim to the Victims' Services Division of the Department of Justice.

12. The Crown Attorney shall request a 'no contact' or other protective order in all appropriate cases where there is an application for judicial interim release. The Crown Attorney shall prosecute without delay all violations of court orders intended to ensure the safety of the complainant/victim.

13. The impact of a crime on a complainant/victim is a relevant and important sentencing consideration. Unless the Crown Attorney is aware that it has already been done, the Crown Attorney should inform the complainant/victim of their right to submit a victim impact statement to the court.

14. Where a victim/complainant appears at the court for the purpose of commencing a private prosecution, court staff should determine whether the victim/complainant have

consulted with the police. If no consultation has occurred, the complainant should be referred to the police. However, if the complainant then or later wishes to proceed with a private prosecution, court staff should deal with the matter according to law. Nothing in this Directive shall be interpreted as limiting the right of a person to commence a private prosecution.

William Gillis
Minister of Justice

Halifax, Nova Scotia
March 28, 1996

APPENDIX "B"

Please see the DPP Directive entitled

THE DECISION TO PROSECUTE

(a Core Policy in the Crown Attorney Manual)

APPENDIX "C"

Men's Intervention Programs

1. **Amherst**

New Directions
P. O. Box 1141
Amherst, N.S.
B4H 4L2

Phone: 667-1344

2. **Halifax**

New Start
3115 Veith Street
Halifax, N.S.
B3K 3G9

Phone: 453-4320

3. **New Glasgow**

New Leaf
P. O. Box 661
New Glasgow, N.S.
B2H 5E2

Phone: 755-2220

4. **Sydney**

Second Chance
54 Prince Street
Sydney, N.S.
B1P 5J7

Phone: 567-0979

PRACTICE NOTE

THE USE OF PEACE BONDS IN CASES OF SPOUSAL/PARTNER VIOLENCE

The pro-arrest, pro-charge, pro-prosecution directive of the Minister of Justice in regard to matters of spousal/partner violence requires prosecutors to pursue charges involving spousal/partner violence whenever there is a realistic prospect of conviction, and prosecution is in the public interest. Because of the prevalence of domestic violence, and the tragic consequences often associated with this crime, only rarely is it not in the public interest to proceed with such charges when the available evidence will support a prosecution.

In light of the pro-prosecution directive in regard to spousal/partner violence, Crown Attorneys have asked "When is it OK to 'take a peace bond' in a case of spousal/partner assault, and withdraw the charge?" Like most questions relating to the exercise of discretion, this question cannot be answered without providing a context, and the answer is never simple.

The directive relating to spousal/partner violence is not absolute: it alludes to the duty of a prosecutor to carefully examine each case and to determine whether or not proceeding with a charge would be in the public interest. As noted in the policy entitled "The Decision to Prosecute", the determination of the public interest in a particular case involves the consideration of numerous factors which may vary considerably in weight from case to case, or which may be unique to the particular case being considered. Just as it is not possible to establish a set of rigid rules in regard to the circumstances in which proceeding with a case is appropriate, it is not possible to establish rigid rules as to when it would be appropriate to discontinue a prosecution.

There are certain cases in which the willingness of the accused to enter into a peace bond is one of a number of relevant circumstances which may be considered by the prosecutor in deciding whether or not the public interest requires that a particular charge be prosecuted. What follows is an example of the approach which might be taken by a prosecutor in assessing whether or not it would be in the public interest to withdraw a particular charge of partner assault and have the accused enter into a recognizance under section 810 of the *Criminal Code*.

The prosecutor should first review the evidence and background to the case and be satisfied that the following "conditions precedent" to a possible withdrawal of the charge are present:

- the evidence is "borderline" i.e. the evidential threshold for prosecution is met but it is not clear to the prosecutor that a conviction is more likely than an acquittal (it is recognized that the strength of a case may diminish over time, particularly when further information is received);
- the incident was relatively minor i.e. there were no injuries, the matter did not continue over an extended period of time, and the aggressive behaviour of the accused stopped without intervention by outside parties;
- the actions of the accused appear to have been out of character i.e. the accused has no known history of assaults or threats;

- the accused is prepared to enter into a recognizance to keep the peace in regard to the 'victim'; and
- the prosecutor is satisfied that the 'victim' is likely to report any breach of a recognizance, or other aggressive behaviour by the accused, to the police other authorities.

If these conditions are satisfied, then the prosecutor should go on to consider the other circumstances of the case before making a decision. Some of the other circumstances which may have a bearing on the decision are these:

- the wishes of the 'victim';
- whether the pre-trial process (which may have included police involvement, arrest, detention, retaining counsel, or court appearances) appears to have had a deterrent effect upon the accused;
- whether the accused has voluntarily embarked upon a rehabilitation program e.g. for anger management, for alcohol abuse, marriage counseling, etc.;
- the prevalence of partner assaults in the locality where the incident occurred, and the success or failure of this approach (peace bonds) in similar local cases;
- the maturity, personality, and attitude of the parties involved, and the nature of their particular relationship;
- the history of the accused in regard to compliance with previous court orders, and his/her general respect for authority;
- the staleness of the matter i.e. the time which has passed since the charge arose.

Having reviewed these circumstances or any others considered to be relevant in a particular case, and having balanced any competing factors, a decision can then be made to proceed with the charge, to withdraw the charge, or to seek further information or advice.

It should be observed that this Practice Note is not a directive to take a particular course of action when the "conditions precedent" listed earlier are present, and it does not relieve a prosecutor of the duty to carefully review the circumstances of each case before exercising discretion. It is not the policy of the PPS to "resolve" a charge of partner violence by simply exchanging a peace bond for the withdrawal of a charge; a peace bond is not to be a *quid pro quo*. The willingness of the accused to enter into a peace bond is only one of many factors which may be considered when assessing a case, and prosecutors should ensure that the integrity of the criminal justice system continues to be respected.

In cases where there is no realistic prospect of conviction, it is open to the prosecutor to urge the accused (through counsel) to enter into a recognizance in regard to the 'victim', provided that the prosecutor does not mislead the accused or defense counsel in regard to the assessment which has been made of the charge and the intention of the prosecutor to withdraw it. Again, it should not appear that the withdrawal was in exchange for the signing of the recognizance.

Further advice:

(1) In assessing the gravity of the incident giving rise to the charge, and in assessing the weight to be given to a request by the victim to withdraw the charge, prosecutors must be mindful of the dynamics of "the cycle of violence" as described in the literature relating to spousal/partner assaults. In particular, because an apparently minor assault may be "the tip of the iceberg", the background to the matter should be explored as fully as is possible.

(2) If the accused enters into a peace bond, the prosecutor should ensure that the 'victim' understands the terms of the recognizance imposed upon the accused and how to promptly report a violation of the terms. In particular, the 'victim' should understand that behaviour not amounting to an assault may constitute a breach of the recognizance.

(3) If a prosecutor intends to utilize a peace bond to ensure some measure of control over the accused or to provide some degree of protection to a 'victim', a "common law" peace bond will not suffice. Such bonds are not enforceable under the criminal process. Accordingly, when a peace bond is appropriate, only a recognizance under section 810 of the *Criminal Code* should be utilized.

R. v. ______________________________ PPS Office: __________________

PPS File No. ________________________

SPOUSAL/PARTNER VIOLENCE - CHECKLIST

ARRAIGNMENT

1. Was the accused brought to court in custody? (If no, go to the next section.) • Y • N

   (a) Was this a case in which it was appropriate to oppose release? • Y • N
   (b) Was the accused remanded in custody? • Y • N

2. If the accused was released, what were the conditions of release?
   • N (a) no contact with complainant • Y
   (b) no weapons • Y • N
   (c) other • Y• N

3. How did the Crown Attorney notify the complainant of the release conditions?

   Through the police ____ Through Victims' Services ____ Directly ____

Crown Attorney (initials) ____________

VICTIMS' SERVICES REFERRAL

4. Did the Crown Attorney refer the complainant to the Victims' Services Division of the Department of Justice? • Y • N

5. To your knowledge, did another person or agency refer the complainant to the Victims' services Division? • Y • N

Crown Attorney (initials) ____________

GUILTY PLEA/TRIAL

6. Was the complainant interviewed by the Crown Attorney? • Y • N

7. Was there a recantation by the complainant? • Y • N

   If yes, did the prosecutor

   (a) inquire re the cause of recantation? • Y • N

   (b) advise the complainant of available support services? • Y • N

   (c) instruct the police to take a fresh statement from the complainant? • Y • N

(h) Was there a guilty plea? • Y • N

• If a trial was held, was the accused found guilty? • Y • N

Crown Attorney (initials) ____________

SENTENCING

• What sentence was recommended by the Crown Attorney?

Federal ____ Provincial ____ Conditional Sentence ____ Fine ____ Proation ____

• If probation was imposed, what conditions were recommended?

Counselling ____ No contact ____ No weapons ____ Other ____

Crown Attorney (initials) ____________

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R. v. ______________________________ PPS Office: ______________________

PPS File No. ______________________ Date of Discontinuance

NOTICE OF DISCONTINUANCE
(of Spousal/Partner Violence Case)

The decision to discontinue was made by ____________________________ (Crown Attorney).

Prior to the discontinuance, was the Chief Crown Attorney consulted? • Y • N

Was the discontinuance due to insufficient evidence? • Y • N

If yes, was the complainant present at court? • Y • N

If the complainant was not at court, was the complainant subpoenaed? • Y • N

If the complainant was not at court, was an adjournment requested? • Y • N

If the complainant was not at court, was a witness warrant requested? • Y • N

Was recantation by the complainant a factor? • Y • N

Was the case discontinued for public interest considerations? • Y • N

Were the reasons for discontinuance stated on the record in court? • Y • N

Did the accused enter into a peace bond (Criminal Code section 810)? • Y • N

Additional comments of prosecutor re discontinuance:

Comments of Chief Crown Attorney:

Retain one copy for file. Send one copy to Chief Crown Attorney.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

TRANSFER ("PICK-UP") ORDERS

NATURE OF DOCUMENT: PRACTICE NOTE

FIRST ISSUED: JANUARY 20, 2006

EDITED / DISTRIBUTED: JANUARY 20, 2006

NOTE:

THIS POLICY DOCUMENT IS TO BE READ IN THE CONTEXT PROVIDED BY THE **PREFACE** TO THIS PART OF THE MANUAL.

CERTAIN WORDS AND PHRASES HAVE THE MEANINGS ESTABLISHED IN THE **"WORDS & PHRASES"** SECTION OF THIS PART OF THE MANUAL.

TRANSFER ("PICK-UP") ORDERS

(Requests for Remands Where Warrants are Outstanding; Inter-office Requests for Transfer Orders under S. 527, *Criminal Code*; Police Requests for Transfer Orders)

This Practice Note is intended to deal with cases where a Crown Attorney dealing with an accused person who is in custody is aware that an Arrest Warrant exists requiring the accused person to appear in a court in a location in Nova Scotia other than where the accused is located. The goal of this Practice Note is to ensure that appropriate steps are taken to have the accused person transferred to the court which issued the Warrant and also to ensure that adequate records of the process are maintained.

Requests for Remands

In situations referred to above, a number of steps are to be followed as circumstances dictate. The Crown Attorney where the accused is located shall initially request the court to remand the accused person to the court which issued the Warrant. If the accused person is not in custody on the matter in relation to which the Warrant was issued and it is anticipated that the court will not order a remand because of that fact, the Crown Attorney should make efforts to have a police officer or a Sheriff's Deputy arrest the accused person on the outstanding Warrant. Following that, the Crown Attorney should request the remand as described above.

If it is not practical to remand an accused person to a court which issued an Arrest Warrant in another area of the province due to the fact that court is not scheduled to sit within a reasonable period of time, the Crown Attorney where the accused is located should seek a remand to another court in the same area served by the Crown office which holds the files in relation to which the Warrant was issued.

Inter-office Requests for Preparation of a Transfer Order (Section 527 of the *Criminal Code*)

This part of the Practice Note is intended to address cases where a Crown Attorney dealing with an accused person who is in custody is aware that an Arrest Warrant exists which requires the accused to appear in a court in a location in Nova Scotia other than where the accused is located, and the court where the accused is located refuses the Crown's request for a remand of the accused to the court which issued the Warrant. In those cases, the Crown Attorney where the accused is located shall contact the office which has possession of the file(s) in relation to which the Warrant was issued, and if possible the Crown Attorney with carriage of the file(s), and advise that Crown Attorney or his/her Administrative

Assistant of the need to prepare a Transfer Order whereby the accused person will be transferred to the court which issued the Warrant. In addition, the Crown Attorney where the accused is located must request that the accused be remanded in custody to allow for the preparation of the Transfer Order.

The Crown Attorney where the accused is located shall also forward by fax to the Crown Attorney office in the area where the Warrant was issued a written request for the preparation of a Transfer Order in addition to any oral communication which occurs in relation to the matter. The written request shall be in the form attached. The Crown Attorney where the accused is located must ensure that he/she receives a written confirmation of receipt of the Transfer Order request, together with a written indication that the Transfer Order either will or will not be prepared.

The Crown Attorney or appropriate Administrative Assistant in the location where the Warrant was issued shall, by return fax, acknowledge in writing receipt of the request for the preparation of a Transfer Order and shall indicate whether the Transfer Order will be prepared. In cases where the Transfer Order will not be prepared, a reason will be provided using the form attached. It is anticipated that cases where the accused person will not be returned to the office where the Warrant was issued will be rare e.g. due to the passage of time, there is no longer a realistic prospect of conviction, or it is no longer in the public interest to pursue the charge.

A copy of the Request for Preparation of a Transfer Order document must be filed in each of the Crown Attorney offices involved.

Police Requests for the Crown to Obtain Transfer Orders to be in Writing

All police services and detachments have been informed that requests from the police for the Crown to obtain Transfer Orders must be in writing. Attached is a form which has been provided to police services for this purpose.

Please ensure that police in your area follow this procedure. Also ensure that in cases where a Transfer Order has been obtained by the Crown in response to a police request, a written confirmation of that fact is sent to the police service. The form provided to the police has a section for Crown office use for this purpose.

Crown Inter-Office Request to Obtain a Transfer Order

Office Originating Request:

Accused: ______________________________

Location of Accused: ______________________________

Crown Attorney Making Request for Transfer Order: ______________________________

Place Where Accused Is Required: ______________________________
(Court from which Warrant Issued)

Office Receiving Request:

Person Acknowledging of Receipt of Request: ______________________________

Date Request Received: ______________________________

PPS File Number: ______________________________

Place Where Accused Is Required: ______________________________
(Court from which Warrant Issued)

Transfer Order will be prepared: Yes _____ No _____

If Transfer Order will not be prepared, please give reason:

____

____

____

Return copy of completed form to originating office

Place copy in prosecution file

____

(Police Service - Detachment)

Transfer Order (Pick-Up) Request

Accused: ____

Person Required: ____

Date of Request: ____

Facility of Incarceration: ____
(Where accused located)

Police File #: ____

Place(s) Required: ____

Date & Time Required: ____

Courtroom No. ____

Reason Required (plea, trial, etc.): ____

Officer Making Request: ____

Crown Contact: ____

For PPS Office Use:

Confirmation Transfer Order Prepared: ______________________________
(Signature)

Date: ____________________

PPS File #:____________________

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

VICTIMS OF CRIME - PUBLICITY

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VICTIMS OF CRIME - PUBLICITY
(Practice Note)

On December 1, 1999 Bill C-79 was proclaimed into law. This law impacts significantly upon victim/witness rights and the imposition of publication bans by the courts.

Order Restricting Publication - Section 486(3)(b)

Previously, 486(3) enumerated the Criminal Code offences in 486(3)(a)(i); (ii) and (iii) which permitted the presiding Judge or Justice to make an order directing the identity of a complainant or a witness and any information that could disclose the identity of the complainant or witness not be published in any document or broadcast in any way.

The amendment in 486(3)(b) authorizes the court to issue such publication bans in cases involving "two or more offences being dealt with in the same proceeding where at least one of charge offences is referred to in any of paragraphs (a)(i), (ii) and (iii). **The section clarifies previous 486(3) by providing for publication ban on identity of sex offence complainants and will protect their identity as victims of sexual offence as well as any other offence perpetrated on them by the accused.**

Ban on Publication - Section 486(4.1)

This is a new provision authorizing the court to make an order directing that the identity of a victim or witness, or any information that could disclose their identity, shall not be publicized in any document or broadcast in any way, in any proceedings against an accused "other than in respect of an offence set out in 486(3)", where the Judge or Justice is satisfied that the order is necessary for the proper administration of Justice.

This provision will codify prevailing common law as established by the Supreme Court of Canada in the 1994 decision of *Dagenais et al,* 94 C.C.C. (3d) at 289.

Order Restricting Publication/Disclosure - Section 486(4.2)

An order made under 486(4.1) does not apply in respect of the disclosure of information in the course of administration of justice if it is not the purpose of the disclosure to make the information known in the community.

Application - Section 486(4.3)

An order under s. 486(4.1) may be made on the application of the prosecution, victim or witness.

The impact of this provision makes it necessary for the Crown to develop guiding principles to assist in identifying the appropriate circumstances which will necessitate the Crown to make such applications.

Content of Application - Section 486(4.4)

The application must be in writing and set out the grounds on which the applicant relies to establish that the order is necessary for the proper administration of justice.

Notice of Application - Section 486(4.5)

The applicant shall provide notice of the application to the prosecution, the accused, and any other person affected by the order that the Judge or Justice specifies.

Hearing May Be Held - Section 486(4.6)

The Judge or Justice may hold a hearing to determine whether an order under 486(4.1) should be made and the hearing may be in private.

Factors To Be Considered - Section 486(4.7)

In determining whether to make an order under section 486(4.1), the Judge or Justice shall consider:

(a) the right to a fair and public hearing;

(b) whether there is a real and substantial risk that the victim or witness would suffer significant harm if their identity were disclosed;

(c) whether the victim or witness needs the order for their security or to protect them from intimidation or retaliation;

(d) society's interest in encouraging the reporting of offences and the participation of victims and witnesses;

(e) whether effective alternatives are available to protect the identity of the victim or witness;

(f) the salutary and deleterious effects of the proposed order;

(g) the impact of the proposed order on the freedom of expression of those affected by it; and

(h) any other factor that the judge or justice considers relevant.

Conditions - Section 486(4.8)

An order make under section 486(4.1) may be subject to any conditions that the Judge or Justice thinks fit.

Publication of Application Prohibited - Section 486(4.9)

Unless the presiding Judge or Justice refuses to make an order under section 486(4.1), no person shall publish in any document or broadcast in any way

- the contents of the application referred to in section 486(4.3)
- any evidence taken, information given, or submissions made at a hearing under section 486(4.6), or
- any other information that could identify the person to whom the application relates as a victim or witness in the proceedings.

Failure to Comply with Order - Section 486(5)

This section has been amended to make it an offence punishable on summary conviction for failure to comply with an order under the new provision section 486(4.1).

Policy Considerations - Section 486(4.1)–Implications for Crown

This legislation allows for a publication ban to be requested for an offence(s) other than those referenced in s. 486(3)(a)(i)(ii) and (iii). Therefore, the potential exists for publication bans to be requested by the Crown, victim or witness for virtually all offences, but such orders will only be granted where the Judge or Justice is satisfied that it is necessary for the proper administration of justice.

In determining whether or not the Crown will request publication bans under s. 486(4.1), the Crown Attorney should assess thoroughly all the factors enumerated in s. 486(4.7). Only after such an analysis is it appropriate for the Crown Attorney to make an application pursuant to s. 486(4.3). It is recommended the Crown Attorney should personally interview the complainant and/or witness(s) and canvass the applicability of the 8 factors listed in s. 486(4.7). Where the Crown Attorney is satisfied such an application is necessary for the proper administration of justice, the Crown Attorney should initiate the application in compliance with s. 486(4.4), (4.6), (4.7), and (4.8).

Where the Crown Attorney is satisfied an application should not be made, a s. 486(4.3) application may still nonetheless be made by a victim or witness. In the event of same, the Crown Attorney should consult with and advise the Chief Crown Attorney of the decision not to seek a publication ban at which time the Chief Crown Attorney will review the decision of the Crown Attorney and determine whether or not it is an appropriate position for the Crown to take in the circumstances. This process is not intended to interfere with the discretion of the Crown Attorney but to ensure all the relevant factors have been thoroughly considered by the Public Prosecution Service and to ensure uniformity throughout the Province where an application for a publication ban is made to the Court by a victim or witness(s).

PREPARED BY: Kenneth C. Haley, Q.C., Chief Crown Attorney, and
Daniel A. MacRury, Crown Attorney.

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NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

ABORIGINAL CASES

NATURE OF DOCUMENT:	DPP DIRECTIVE
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NOTE:

THIS POLICY DOCUMENT IS TO BE READ IN THE CONTEXT PROVIDED BY THE **PREFACE** TO THIS PART OF THE MANUAL.

CERTAIN WORDS AND PHRASES HAVE THE MEANINGS ESTABLISHED IN THE **"WORDS & PHRASES"** SECTION OF THIS PART OF THE MANUAL.

ABORIGINAL CASES

[**Note**: In this policy document, the term "**aboriginal**" has the meaning established in s. 35(2) of the *Constitution Act, 1982*, i.e. it includes the Indian, Inuit, and Metis peoples of Canada. "**Aboriginal cases**" are cases involving (or potentially involving) reference to rights under section 35 of the *Constitution Act, 1982*, or aboriginal treaties.]

Introduction

Prosecutions involving aboriginal persons or issues differ from other prosecutions. In some cases the differences are subtle; in other cases, the differences are substantial. All of these cases require sensitivity to the aboriginal culture, and many require specialized knowledge. It must be recognized, for instance, that hunting, fishing, trapping and certain other activities integral to the aboriginal way of life may be protected by specific treaties; awareness of such treaties is essential when prosecuting cases wherein these matters may arise. The *Criminal Code* demands a unique approach to the sentencing of aboriginal persons. Parliament has also given unique constitutional protection to aboriginal rights through Section 35 of the *Constitution Act, 1982.* Those prosecuting aboriginal persons must be knowledgeable in regard to the nature and extent of these protections. Moreover, the Supreme Court of Canada has stated that

> ....the government has the responsibility to act in a fiduciary capacity with respect to aboriginal peoples. The relationship between the government and aboriginals is trust-like, rather than adversarial, and contemporary recognition and affirmation of aboriginal rights must be defined in light of this historic relationship.
>
> **R.v. Sparrow**, (1990), 56 C.C.C.(3d) 263, per Dickson, C.J.C. at p. 287.

This dictum colours the approach which is taken to interpretation of statutory provisions affecting aboriginal persons and is a further example of the how aboriginal cases may require a different approach.

Prosecutors must also be aware that the aboriginal rights arguments put forward as defences in criminal and quasi-criminal prosecutions often connect with arguments developed in parallel civil litigation and may impact the positions taken by parties attempting to resolve very serious issues in another forum. This further emphasizes the need for the PPS to have a consistent, informed, and coordinated approach to aboriginal cases.

Aboriginal Law Working Group

In order to help ensure that the PPS continues to be able to deal with aboriginal cases competently and in a timely fashion, the PPS has determined that it is appropriate to establish and maintain an Aboriginal Law Working Group (ALWG) as a standing committee.

Composition of the ALWG

The ALWG shall be chaired by the Chief Crown Attorney -Special Prosecutions, and shall include at least four other prosecutors, as may be directed by the DPP on the recommendation of the Chief Crown Attorney -Special Prosecutions. As far as is possible, the members of the ALWG shall be prosecutors who have demonstrable expertise and interest in aboriginal issues. [Currently (December, 2003), the ALWG includes Crown Attorneys Richard MacKinnon, William Delaney, James Clarke, and Darcy MacPherson.]

Mandate of the ALWG

The ALWG shall:

- identify Crown Attorneys willing and able to develop the expertise necessary to review and prosecute aboriginal cases ;
- be available for consultation with Crown Attorneys in regard to aboriginal cases;
- promote consistency in the prosecution of aboriginal cases;
- identify research projects relating to aboriginal issues in which the PPS should participate, and coordinate PPS participation in inter-governmental initiatives relating to aboriginal prosecutions; and
- ensure that effective processes are in place to identify aboriginal cases as they arise, so that appropriate prosecution resources are made available for such cases in a timely fashion.

Handling Aboriginal Cases

The Crown Attorney who first becomes aware of an aboriginal case is required to prepare a "Case Bulletin" in regard to the case [see the separate policy re Case Bulletins], unless it is clear that the case is "routine" and will not involve new arguments or issues relating to treaty rights or the *Constitution Act, 1982.* If there is uncertainty in this regard, a Case Bulletin should be prepared. In addition to the usual distribution list, a copy is to be sent to the Chief Crown

Attorney -Special Prosecutions.

The Crown Attorney who first becomes aware of an aboriginal case must also immediately bring the case to the attention of the Chief Crown Attorney for the region where the case arose. Unless the case clearly will not involve new arguments or issues relating to treaty rights or the *Constitution Act, 1982*, the Chief Crown Attorney should promptly contact the Chief Crown Attorney -Special Prosecutions to determine who shall prosecute the case. This will often require that the file (or a copy of it) be delivered to the Chief Crown Attorney -Special Prosecutions so that it can be carefully assessed.

The Chief Crown Attorney -Special Prosecutions, in consultation with the ALWG, shall consider these options:

(1) the Special Prosecutions Branch shall assume carriage of the case;

(2) the case shall be prosecuted by the local Crown Attorney with a member of the ALWG as co-counsel;

(3) the case shall be prosecuted by the local Crown Attorney with advice or instructions from the ALWG; or

(4) some other arrangement for prosecution is appropriate.

In determining the approach to be taken, consideration shall be given to the nature and complexity of the issues, the availability of expert counsel from the ALWG, the prosecution resources of the region, and the recommendation, if any, of the Chief Crown Attorney of the region where the case arose. If difficulty is encountered in promptly determining a satisfactory approach, the DPP, or his designate, should be consulted.

Ideally, the decision regarding who shall have carriage of the case should be made within one week of the file being delivered to the Chief Crown Attorney -Special Prosecutions, and before any hearing dates are set.

The Chief Crown Attorney -Special Prosecutions, as Chair of the ALWG, is to ensure that other branches of government involved in aboriginal issues are kept appropriately informed of the existence and progress of aboriginal cases being prosecuted by the PPS.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

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"BAIL REVIEWS"
- CRIMINAL CODE SECTION 525

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PUBLIC PROSECUTION SERVICE OF NOVA SCOTIA

and

CORRECTIONAL SERVICES DIVISION
NOVA SCOTIA DEPARTMENT OF JUSTICE

PROTOCOL

This is a Protocol for Crown Attorneys and Correctional Services personnel in relation to s.525 of the **Criminal Code**.

1. The Correctional Services Division will identify cases where persons are entitled, or are about to become entitled, to a hearing pursuant to s.525 of the **Criminal Code**.

2. (a) Upon the introduction of this protocol, in relation to persons who are already entitled to a s.525 hearing or persons who will, within 5 days, be entitled to a s.525 hearing, the Correctional Services Division will immediately contact the local Crown attorney and advise of such cases;

   (b) In other cases, the Correctional Services Division will give the local Crown Attorney 5 days advance notice of cases where persons are about to become entitled to a s.525 hearing.

3. Upon receipt of notice pursuant to clause 2, the local Crown Attorney will advise the Correctional Services personnel of the date and time for the Application to set a Date for a s.525 hearing.

4. The Correctional Services Division will complete the necessary forms for the Application to set a Date for a s.525 hearing.

5. Correctional Services personnel will serve copies of the forms on the person entitled to the s.525 hearing at least 2 clear days before the date set to make the Application to set a Date for the s.525 hearing.

6. Correctional Services will deliver the original documents and one copy to the local Crown Attorney's office at least 3 clear days before the date of the Application to set a Date for the s.525 hearing.

7. The Crown Attorney will obtain a Pick-up Order for the prisoner.

8. Correctional Services will transport the prisoner to the court at the appropriate time for the Application to set a Date for the s.525 hearing.

9. The local Crown Attorney will conduct all courtroom proceedings in relation to the s.525 hearing.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

CASE BULLETINS

NATURE OF DOCUMENT:	**PPS MANAGEMENT DIRECTIVE**
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The Need for Case Bulletins

1. Accountability

Tens of thousands of criminal cases and quasi-criminal cases are before the courts in Nova Scotia each year. The DPP is responsible for the conduct of each of those cases and the Attorney General is accountable to the Legislative Assembly for every prosecution in Nova Scotia. It is, of course, impossible for the DPP or the Attorney General to have direct knowledge or involvement in more than a small portion of those cases. The DPP and other senior officials must rely upon Crown Attorneys to provide them with accurate, timely information in regard to cases around the province in order to meet their accountability obligations. It is essential that the PPS develop and maintain mechanisms through which case-specific information can be disseminated throughout the PPS and be available to effectively brief senior officials. Case Bulletins are an integral part of this process.

2. Transparency

Public confidence in the administration of criminal justice requires that the general public as well as accused persons and the citizens directly involved in criminal cases have reliable information in regard to the status of prosecutions and the rationale for certain decisions which are made by prosecutors. The PPS is committed to ensuring that appropriate information is readily available in an understandable form to those entitled to it. To meet this commitment to transparency, the communications staff of the PPS must be provided with necessary information in a timely fashion. Case Bulletins are vital to this important function.

3. Resource management

Certain "major prosecutions" have resource implications for the PPS which must be flagged as soon as possible. Some cases may require the prompt redeployment of counsel; other cases may require the procurement of extra resources. These important resource implications provide an additional need for reliable information, at the earliest possible opportunity. Case Bulletins can thus be of assistance in managing prosecution resources.

For which matters are Case Bulletins to be prepared?

Case Reports must be prepared in regard to the following matters:

1. homicides and other unlawful killings (e.g. by criminal negligence);
2. criminal conduct by, or directed at, politicians and other public figures;
3. cases involving aboriginal rights or novel Charter issues;
4. cases involving large numbers of victims or criminal activity at several places;
5. cases which have attracted (or will attract) unusual media interest.

Case Bulletins should be prepared for all other matters for which there is reason to believe that the DPP, the Attorney General, or the communications staff will require information. When uncertain about the need to prepare a Case Bulletin, Crown Attorneys should prepare a Case Bulletin, or consult with their supervisors.

What information is to be included?

To facilitate the collection and dissemination of essential information, the attached Case Bulletin template has been developed. Utilization of the template will ensure that the information is available in a standard, understandable format which can be updated as required.

Who prepares the Case Bulletin?

Generally, the Crown Attorney with carriage of the case should prepare the Case Bulletins relating to that case. If a matter does not involve criminal charges, or there is likely to be some delay before a prosecutor is assigned to the matter, the Crown Attorney who first becomes aware of the matter should prepare a Case Bulletin, unless otherwise instructed by his or her supervisor.

To whom are Case Bulletins to be sent?

Case Bulletins are to be sent simultaneously to

- the office of the DPP (blagdosb@gov.ns.ca; fax 424-4484)
- the office of the Deputy DPP (fougerim@gov.ns.ca; fax 424-4484)
- the Director of Communications (hansence@gov.ns.ca; fax 424-4484)
- the Chief Crown Attorney accountable for the matter.

How, and when, are Case Bulletins to be delivered?

It is essential that Case Bulletins be delivered as soon as possible. Ideally, this will be immediately after the Crown Attorney (or other PPS member involved in the matter) becomes aware of the matter. Case Bulletins should be sent by e-mail or fax. In exigent circumstances, an oral report may be given, with a written Case Bulletin to follow as soon possible.

PPS managers and communications staff are aware of the need to maintain confidentiality in regard to investigations and ongoing prosecutions. In many instances, the content of a Case Bulletin will be kept on file until it is appropriate to provide information to parties outside of the PPS. This does not reduce the need to prepare a Case Bulletin in a timely fashion.

Chief Crown Attorneys are responsible for ensuring that Case Bulletins are prepared and promptly delivered in regard to matters for which they are accountable, and that the content is accurate.

FOR INTERNAL (PPS) USE ONLY

CASE BULLETIN

Subject: ______________________ Date: ______________
NAME OF ACCUSED / PERSON / ENTITY AT CENTRE OF ISSUE

Charge(s) (if any) ______________________

Next court appearance (date): ______________ Court:

Facts/background (brief summary):

Issues to be brought to the attention of the DPP/Managers/Communications staff:

Comments, including recommended action to be taken:

Contact person: Name: ______________

Location: ______________ Telephone: ______________

Cross reference (if any): ______________

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

COMPLAINTS - BAR SOCIETY

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COMPLAINTS TO THE N.S. BARRISTERS' SOCIETY

Preface

Management of the Public Prosecution Service does not wish to interfere with a Crown Attorney's obligation as a Barrister to report improper conduct of a fellow barrister to the Bar Society. This policy strikes a balance between a Crown Attorney's responsibilities as a barrister and as an employee of the Public Prosecution Service.

Policy

Chapter 18 of the Legal Ethics and Professional Conduct Handbook, "Duties to the Profession Generally" imposes a duty on barristers to report to the Society particulars of improper professional conduct. Commentary 18.1 states, in part:

> "A lawyer has a duty to report to the Society particulars of improper professional conduct by another lawyer if it is reasonably perceived by the reporting lawyer that such conduct may result in serious damage to a client or other member of the public."

If a Crown Attorney reasonably perceives that conduct of another lawyer requires them to report the conduct to the Bar Society pursuant to Chapter 18 of the Legal Ethics and Professional Conduct Handbook, the Crown Attorney shall, before making a report to the Bar Society advise the Chief Crown Attorney for the Region/Section in which they work of the circumstances of the intended complaint.

If the Chief Crown Attorney agrees that a complaint to the Bar Society should be made s/he shall advise the Director of Public Prosecutions of the circumstances of the intended complaint.

The Director of Public Prosecutions will decide whether the Service will file a complaint to the Bar Society in relation to the impugned conduct. Where a complaint is made by the Service, the Crown Attorney who advanced the complaint may also be noted as a complainant, if s/he so wishes.

Where a decision is made by the Service not to lodge a complaint, the Crown Attorney in question may do so in their personal capacity if they so choose. In such a case, the Crown Attorney must make it clear to the Bar Society that they are making the complaint in their personal capacity.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

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COMPLAINTS - PUBLIC

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COMPLAINTS FROM THE PUBLIC

A. RESPONSE TO COMPLAINT LETTERS

From time to time the Public Prosecution Service receives complaints from persons outside the service regarding the conduct of a Crown Attorney. Management Committee believes that it is in the best interest of the Crown Attorney involved and the complainant to have complaints resolved as expeditiously as possible. To that end, while recognizing that operational requirements must take priority, the Service wishes to establish time standards for responding to complaints to ensure that they are handled as expeditiously as possible.

At the February 19, 1999 meeting of the Public Prosecution Service Management Committee, the following target deadlines were identified:

(1) Upon receiving a complaint, the person to whom the complaint was addressed will within 5 days:

  (a) send a written acknowledgment of the complaint to the complainant.

  (b) forward the complaint to the appropriate Chief Crown Attorney for response. (This doesn't apply if the Chief Crown Attorney was the person to whom the complaint was addressed).

(2) The Chief Crown Attorney within 10 days of receipt of the complaint by the Service, will send a copy of the complaint to the Crown Attorney involved requesting their response to the complaint and their response to any question(s) asked by the Chief Crown Attorney

(3) **Within thirty (30) days** of receiving a copy of the complaint against them, the Crown Attorney will submit their response to the complaint and answer to any question(s) asked by the Chief Crown Attorney, together with any relevant material.

(4) (a) Where the complaint is addressed to the Chief Crown, **within thirty (30) days** of receiving the Crown Attorney's response to the complaint, the Chief Crown Attorney will respond, in writing, to the complainant. A copy of this response will be sent to the Crown Attorney involved and the Deputy Director of Public Prosecutions.

  (b) Where the complaint is originally addressed to the Deputy Director of Public Prosecutions, Director of Public Prosecutions or Minister of Justice, **within thirty (30) days** of his/her receiving the Crown Attorney's response to the complaint, the Chief Crown Attorney will submit a report on and assessment of the complaint to the Deputy Director of Public Prosecutions. This report will include the Crown Attorney's response to the complaint. A copy of the report will be sent to the Crown Attorney involved.

(4) **Within thirty (30) days** of receiving a report of the Chief Crown Attorney, the Director of Public Prosecutions, will respond, in writing, to the complainant and send a copy of the response to the Chief Crown Attorney and Crown Attorney involved.

The Deputy Director of Public Prosecutions or Chief Crown Attorney may delegate their responsibilities as described above.

A similar process will be followed in relation to complaints against Chief Crown Attorneys by persons outside the Service.

References to a period of days in this memorandum refers to calendar days.

The above-noted practice is in accordance with how the Service currently handles complaints by a member of the public concerning the conduct of a Crown Attorney. The Service is simply adding target response times to the process.

B. COMPLAINTS PROCEDURE

The mandate of the Chief Crown Attorneys includes responsibility for complaint resolution. Members of the public or peace officers may make a complaint concerning the actions of a Crown Attorney to the Public Prosecution Service . The complainants are encouraged to provide their concerns in writing to the appropriate Chief Crown Attorney. A copy of the complaint letter is then forwarded to the Crown Attorney concerned for his or her response to the complaint. Following receipt of those comments, the complaint is assessed and a determination is reached as to the appropriate response. As part of the review process, the supervising Crown Attorney may examine a transcript of any court proceedings which are relevant to the complaint. Upon completion of this review, both the complainant and the Crown Attorney concerned are advised of the response of the Public Prosecution Service to the complaint.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

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CONFLICT OF INTEREST

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CASES INVOLVING A CONFLICT OF INTEREST or the Appearance of a Conflict of Interest*

Occasionally, circumstances may give rise to a conflict or the appearance of a conflict of interest for the Crown Attorney who would otherwise handle a case.

To avoid any perception that a person being investigated or prosecuted might receive different treatment because of a relationship he/she has with a particular Crown Attorney or Crown Attorneys' office, such cases should be brought to the attention of the Chief Crown Attorney for the Region. When a Crown Attorney brings such a case to the attention of his/her Chief Crown Attorney he/she should include any related prosecution(s). The Chief Crown Attorney for the Region will determine whether the case and any related case(s) require special handling. Cases requiring a prosecutor from outside of the region or from outside of the PPS will be referred to the Deputy Director.

****

Conflicts will, generally, be handled, as follows:

1. Where the accused is a Crown Attorney, the Service will utilize an out of province Crown Attorney.
2. Where the accused is an immediate family member of a Crown Attorney, the Service will utilize an out of region per diem Crown Attorney or an out of province Crown Attorney.
3. Where the accused is a close friend of a Crown Attorney, the Service will use an out of the local office Crown Attorney.
4. Where the accused is a member of the Public Prosecution Service, support staff or an immediate family member thereof, the Service will utilize an out of region per diem Crown Attorney.
5. Where the complainant/victim is a member of the Public Prosecution Service or an immediate family member thereof, the Service will utilize an out of region Crown Attorney or an out of province Crown Attorney.
6. Where the complainant/victim is a close friend of a Crown Attorney, the Service will utilize an out of the local office Crown Attorney.
7. Where the accused is a lawyer who practices little or no criminal law, the Service will utilize a Crown Attorney from the local office who does not have a personal conflict handling the case.

*This policy is under review (2002).

8. Where the accused is a lawyer who regularly practices criminal law, the Service will utilize an out of the local office or region Crown Attorney.

9. Where the accused is a lawyer who practices little or no criminal law but practices in association with a lawyer who regularly practices criminal law, the Service will utilize a Crown Attorney from the local office who does not have a personal conflict handling the case.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

ENVIRONMENTAL PROSECUTIONS
- DISCLOSURE TO CROWN

NATURE OF DOCUMENT: CHECKLIST

FIRST ISSUED: UNDATED

LAST SUBSTANTIVE REVISION: UNDATED

EDITED / DISTRIBUTED: SEPTEMBER 3, 2002

DISCLOSURE TO CROWN

ENVIRONMENTAL PROSECUTIONS CHECKLIST

ATTACHMENTS

1. Crown Sheet
2. Informations
3. Statement of Accused
4. Statements of Witnesses who may testify for the Crown
5. Statements of Witnesses who may be Defence witnesses
6. Statements of any other potential witness whether they are believed relevant or not
7. Results of name search at Registry of Joint Stock Companies and copies of certificates (originals kept as exhibits)
8. Notes of all investigators
9. Record of past related/relevant convictions
10. Photographs (originals kept as exhibits - one copy for each of Crown, Court, and each Defendant)
11. Exhibit list showing continuity history
12. Expert Reports
13. Lab Reports
14. Copies of documents
15. Copies of relevant acts and regulation and industry standards to be relied on
16. Search Warrants
17. Search Warrant Informations
18. Report to Justice
19. Hospital Records in the event of injuries or death
20. Estimates of damages
21. List of dates witnesses are unavailable for Court
22. Contact addresses and telephone numbers of witnesses
23. List of relevant recent sentence decisions (be prepared to discuss specific sentence range with Crown)
24. Other material not otherwise listed
25. Additional material which is relevant as a result of further investigation or omission (disclosure is a continuing obligation which is time sensitive)

NovaScotia
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY (FOIPOP) ACT– PROCEDURE RE APPLICATIONS FOR RECORDS

NATURE OF DOCUMENT: DPP DIRECTIVE

FIRST ISSUED: MARCH 4, 2004

LAST SUBSTANTIVE REVISION: MARCH 4, 2004

EDITED/ DISTRIBUTED: MARCH 4, 2004

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY (FOIPOP) ACT -- PROCEDURE RE APPLICATIONS FOR RECORDS

Preamble

The *Freedom of Information and Protection of Privacy* (*FOIPOP) Act,* in force since July 1, 1994, has as its goal the ready provision and prompt access to information held by the government, while protecting the privacy of individuals about whom the government holds information. [The *Act* is available at **www.gov.ns.ca/legi/legc/statutes/freedom.htm**.]

The FOIPOP Act is built on the premise that every document, record or file held by the government is subject to release to the general public. Active prosecutions are excluded from the application of the *FOIPOP Act*, if the records sought can be shown to be part of an ongoing prosecution; otherwise, exemptions from release are generally few in number and narrow in scope. Exemptions are designed to ensure individual privacy, to protect law enforcement techniques, to preserve solicitor client privilege and to protect advice to a Minister or public body given within the previous five years.

The Administrator of the *FOIPOP Act* is designated in writing by the head of the public body (the DPP) and has the responsibility to ensure the Public Prosecution Service's compliance with both the spirit and intent of the *Act*. The *FOIPOP Act* sets strict time lines for the Service's response to *FOIPOP* requests.

When a request is made under the FOIPOP *Act* for records in the possession of the PPS, the *Act* requires that the head of a public body "make every reasonable effort to assist the applicant and to respond without delay to the applicant openly, accurately, and completely..." [see section 7 of the *Act*]. For the purposes of the FOIPOP *Act* , the PPS has delegated the responsibilities of the head of the PPS to the Administrator. All PPS staff have a duty to support the Administrator in meeting the obligations contained in the *Act*. This policy is intended to assist in that regard.

Courts have also pointed out a further obligation to assist the Administrator designated under the FOIPOP *Act*. The FOIPOP Review Officer, in Report FI-97-38 (1998) at paragraph 31, has recommended "that the PPS ensure in the future that its Administrator for this *Act* [FOIPOP] is kept fully informed when dealing with Applications for Access and Requests for Review and has access to all the documents being sought". This policy is also intended to assist all staff of the PPS in meeting this more particular obligation.

Procedures and time lines

1. It is essential that this policy be applied in a way which meets, in all ways, the spirit and intent of the *FOIPOP Act*. The Act demands that the head of every public body respond "without delay" to everyone who seeks access to records; accordingly, time is of the essence in relation to compliance with this policy. More specifically, the Act requires that the Administrator respond to an application within thirty days of receipt. All members of the PPS share the burden of ensuring that this deadline for response is met.

2. Upon receipt of a written request, whether by letter or by the *FOIPOP* Application Form, for Public Prosecution Service records (other than a request for disclosure by counsel for records disclosing allegations against a client), the Crown Attorney or support staff member first aware of the request shall forthwith forward the request by facsimile (or, if more practicable, by hand) to the office of the Administrator. The fax number for the FOIPOP Administrator for the PPS is (902) 424-6309 . In any event, the office of the Administrator is to be made aware of the request within twenty-four hours of receipt by the PPS.

   An application received shall be stamped with the date upon which it was first received by the Public Prosecution Service. If the application is received by an office other than that of the Administrator, it should be stamped with the appropriate office stamp before it is forwarded to the Administrator.

3. Upon receipt of an oral request for Public Prosecution Service records, the Crown Attorney or support staff member shall forthwith refer the requester to the office of the Public Prosecution Service *FOIPOP* Administrator:

   Public Prosecution Service FOIPOP Administrator
   Suite 1225, Maritime Centre
   1505 Barrington St., Halifax NS, B3J 3 K5.

4. Upon receipt by a Public Prosecution Service office of a request from the Administrator for records held by that office which are the subject of a *FOIPOP* application, the Crown Attorney or support staff shall forthwith determine whether the request is for records contained in an active prosecution. If the records are concerning an active prosecution, the office of the Administrator shall be advised of that within 48 hours of receipt of the request.

5. Upon receipt by a Public Prosecution Service office of a request from the Administrator for records, other than those of an active prosecution held by that office, which are the subject of a *FOIPOP* application, the Crown Attorney or support staff shall forthwith make an estimate of the time required to retrieve the record, the quantum of records involved in the retrieval request and the courier costs to forward the records to the Administrator. This estimate shall be submitted, within four business days to the office of the Administrator, in the form attached as Appendix 1.

6. After the cost estimate has been forwarded to the Administrator by a Public Prosecution Service office and upon further request from the office of the Administrator to forward records held by that office which are the subject of a *FOIPOP* application, the Crown Attorney or support staff first in receipt of the request shall forthwith retrieve the records and forward same within five business days. If the retrieval of records cannot be achieved in that time frame, the office of the Administrator shall be immediately advised as to the reason for the delay and the time frame within which the records can be sent.

7. The records sent to the office of the Administrator shall be the complete and **original** records held in that office which are the subject of the *FOIPOP* application. All records forwarded to the office of the Administrator shall be in an 'as is' state; they shall not be altered in any way and no part shall be removed.

8. Upon inquiry from the office of the Administrator, a full and candid account of the matter inquired about shall be given by the inquiree. If the recipient of a request from the office of the Administrator has questions or concerns about the request, they are to be discussed forthwith with the Administrator.

9. All Crown Attorneys and Public Prosecution Service support staff shall receive training on this policy and the obligations that the *FOIPOP Act* places on government departments and agencies. The Public Prosecution Service will ensure that all new employees receive *FOIPOP* training within one year of the commencement of their employment with the Public Prosecution Service.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT
APPLICATION / FEE ESTIMATE

FOIPOP APPLICATION FILE NUMBER:

PPS FILE NUMBER:

PPS OFFICE:

DATE APPLICATION RECEIVED IN PPS OFFICE:

FEE ESTIMATE:

Estimated time (hours) to retrieve records:

@ $15.00/ half hour: $ ____________

Plus courier costs (estimated) : $____________

Total: $____________

Fax within 4 business days to PPS FOIPOP Administrator: (902) 424-6309.

ACTUAL FEES:

Actual time (hours) to retrieve records:

@ $15.00/ half hour: $____________

Plus courier costs (actual): $ ____________

Total: $____________

Forward with requested records to:

PPS FOIPOP Administrator
Suite 1225 Maritime Centre
1505 Barrington Street
Halifax, NS B0J 1N0

NovaScotia
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

ADDITIONAL INVESTIGATION AND REINVESTIGATION

NATURE OF DOCUMENT: AG DIRECTIVE

FIRST ISSUED: MAY 20, 1982

LAST SUBSTANTIVE REVISION: MAY 20, 1982

EDITED / DISTRIBUTED: SEPTEMBER 3, 2002

ADDITIONAL INVESTIGATION AND REINVESTIGATION

Statement of Purpose

The purpose of this directive is to establish a procedure for criminal justice officials to follow where requests for additional investigation or reinvestigation arise:

1) after a charge has been laid;
2) when a case is otherwise subject to judicial process;
3) after a charge has been dealt with according to law; or
4) where an investigation did not result in charges being laid.

Cases Still Within the Judicial System

Where a charge has been laid, or the case is otherwise subject to judicial process (e.g. a fatality inquiry), and has not been finally dealt with according to law, the police shall carry out any additional investigation requested by the Director of Public Prosecutions or the appropriate Crown Attorney.

Cases No Longer Within the Judicial System

Where a conviction has been entered and the case finally dealt with according to law, the federal Minister of Justice has authority under Section 690 of the *Criminal Code* to conduct an inquiry to determine whether further proceedings should be directed. At the request of the Minister of Justice to have a case reinvestigated, the Solicitor General of Nova Scotia will order the R.C.M.P. to conduct the reinvestigation. After the case has been fully reinvestigated, the R.C.M.P. shall forward a copy of the investigative report to the Department of Solicitor General for transmittal to the Minister of Justice.

Cases Where No Charge was Laid

Any request for reinvestigation of an occurrence previously investigated by a municipal police force shall be referred to the Department of Solicitor General. If the Department of Solicitor General determines that the occurrence should be reinvestigated, the Solicitor General will order the R.C.M.P. to conduct the reinvestigation.

The Director of Public Prosecutions, or a Crown Attorney designated by the Director of Public Prosecutions, shall provide advice to the R.C.M.P. in respect of a case under reinvestigation when the R.C.M.P. request such assistance. The R.C.M.P. has the ultimate right and duty to determine the form and content of any charge resulting from the reinvestigation, subject to the right of the Public Prosecution Service to withdraw or stay the charge.

Where the occurrence has been fully reinvestigated and the R.C.M.P. has concluded that charges should not be laid, the R.C.M.P. shall forward a copy of the investigative report to the Department of Solicitor General.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

MAJOR CASE CONTINGENCY PROTOCOL

NATURE OF DOCUMENT: PROTOCOL

FIRST ISSUED: APRIL 18, 2001

LAST SUBSTANTIVE REVISION: APRIL 18, 2001

EDITED / DISTRIBUTED: SEPTEMBER 3, 2002

MAJOR CASE CONTINGENCY PROTOCOL

This protocol sets out the means by which the PPS will, normally, assemble a team of prosecutors on short notice to provide immediate assistance to the police or other investigative agency in complex cases where the demand for prosecutorial services exceeds that which the local Crown Attorneys' office can provide.

When a request is received by the PPS which necessitates a prosecution team being assembled on short notice to provide immediate assistance to the police or other investigative agency:

1. As soon as possible the Director of Public Prosecutions, in consultation with the applicable Chief Crown Attorney, will appoint a case manager;

2. Where assistance is required before a prosecution team can be put together, the Director of Public Prosecutions, in consultation with the applicable Chief Crown Attorney, will assign counsel to provide the required advice/assistance to the police;

3. The case manager, after discussing the case with the investigating officer(s) (and others, if necessary), will, as soon as possible, prepare an assessment of the personnel, technology and physical resource requirements needed to respond to the matter and will forward their assessment to the Director;

4. The Director, in consultation with the case manager and the Chief Crown Attorneys will assign counsel to the matter;

5. In determining which Crown Attorneys to assign to the case, the Director will consider the views of the case manager, the views of the Chief Crown Attorneys and the experience and skills needed to respond to the matter;

6. Where persons possessing the requisite experience and skills have expressed a willingness to serve on such cases, the Director will, normally, call upon them;

7. Where the requisite skills and experience are not available within the Service, the Director will hire outside staff from the list of lawyers previously approved for employment from time to time by the Service;

8. The Director will request that the Manager of Administrative Services immediately begin the process of obtaining approval for staff to backfill for those assigned to the case in question.

9. The Director or Case Manager will advise the Director of Communications of

the matter being resourced and request an assessment of the communication needs.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

MEDIA INQUIRIES AND PUBLIC STATEMENTS (PART OF THE P.P.S. COMMUNICATIONS STRATEGY)

NATURE OF DOCUMENT: PPS MANAGEMENT DIRECTIVE

FIRST ISSUED: JANUARY 15, 2001

LAST SUBSTANTIVE REVISION: SEPTEMBER 19, 2002

EDITED / DISTRIBUTED: SEPTEMBER 24, 2002

Note: The **Communications Strategy** is located in the Appendix to this Manual.

POLICY ON MEDIA INQUIRIES AND PUBLIC STATEMENTS*

RATIONALE

The Public Prosecution Service and the role of Crown Attorney are major components of the Nova Scotia justice system. As the public has a legitimate interest in hearing the Crown's side in cases currently before the courts, Crown Attorneys are encouraged to respond to media inquiries about cases in which they are involved.

POLICY

1. All previous Policies on Public Statements by Crown Attorneys are rescinded.

2. Crown Attorneys should view media inquiries as opportunities to speak to Nova Scotians. Responses to inquiries are to be made in such a manner that they educate the public about the role of the Public Prosecution Service and the Crown Attorney in the justice system, as well as informing the public about the Crown's position in the case in question.

3. When responding to media inquiries, Crown Attorneys are to use common sense and refrain from any comments that could jeopardize the accused's right to a fair trial, reveal undisclosed elements of the Crown's case or strategy, violate any bans imposed by the court, or be interpreted as arguing the Crown's case in the media.

4. Pre-charge advice provided by a Crown to the police is confidential and, therefore, Crown Attorneys should not comment on the existence of a police investigation, prior to a charge being laid.

5. Crown Attorneys may not make public comments in regard to any case in which they are not directly involved. Occasionally, Crown Attorneys are asked by reporters to explain in general terms a court process or legal issue because of a specific case that is (or will be) in the news. Unless the Crown Attorney is directly involved in the prosecution of that case, he or she must guard against having their comments applied to that specific case. If in doubt, refer the reporter to the Director of Communications.

6. Inquiries respecting the possibility of an appeal should be directed to the Chief Crown Attorney responsible for determining whether to initiate an appeal.

***This policy is part of the Communications Strategy - located in the Appendix**

7. Crown Attorneys are also to be guided by section 22.12 of the Barristers' Society's Legal Ethics and Professional Conduct Handbook:

> "Nothing in this Handbook prevents a lawyer from commenting upon the issues and implications of a case before the court or after the rendering of a decision as long as the comment is reasoned, informed and made bona fide in accordance with the spirit and letter of the Rules in this Handbook."

8. Media training will be provided to Crown Attorneys.

9. Crown Attorneys may at any time refer media inquiries to the Service's Director of Communications. Because the media often work with tight deadlines, if a Crown Attorney is unable to take a media call at his or her office, support staff are to direct the call to the Director of Communications.

10. Media encounters must be recorded on a media tracking form and forwarded in a timely fashion to the Director of Communications.

11. Inquiries that are related to Public Prosecution Service policy or management issues are to be referred to the Director of Communications.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

NATIONAL FLAGGING SYSTEM FOR HIGH RISK, VIOLENT OFFENDERS

NATURE OF DOCUMENT: PROTOCOL / INFO

FIRST ISSUED: NOVEMBER 28, 1994

LAST SUBSTANTIVE REVISION: NOVEMBER 28, 1994

EDITED / DISTRIBUTED: SEPTEMBER 3, 2002

NATIONAL FLAGGING SYSTEM FOR HIGH RISK, VIOLENT OFFENDERS

Purpose:

To ensure that in cases where a prosecutor judges there to be a high and continuity risk of future violent conduct, other Crown agents can be aware of all available background information before making crucial decisions with regard to appropriate charges and prosecution strategy, including making a dangerous offender application under Part XXIV of the Criminal Code.

The Flagging system:

- will be based on the CPIC data system (by entries on the Special Interest Police File in the Investigative Data Bank);
- all entries and queries will be made by police;
- all entries will be supported by hard copy files;
- when flagged cases are queried, the requestor will be notified that the case is of special interest to another jurisdiction due to its high-risk nature; some particulars will be given, and a contact will be identified who can provide immediate access to complete file information;
- when flagged cases are queried, the originator will be alerted to the query and its source (where the same case is flagged by more than one jurisdiction, all will be notified simultaneously).

Provinces will be asked to agree to put in place policies that will:

- ensure that cases only be flagged on the authority of a Crown agent and that Crowns are designated for this purpose;
- require Crowns to flag cases following nationally accepted criteria (see next section);
- require police to bring to the attention of a Crown agent any case that is found to be flagged during an investigation;
- maintain in a central location comprehensive supporting files on flagged cases that can be accessed quickly by Crowns and police in distant jurisdictions;
- maintain, update and remove files from the central location.

Criteria:

- in general, reason to believe a new offence will be committed which, in combination with existing evidence, would be sufficient grounds for a DO application;
- in an earlier case the DO criteria (ss. 752 & 753) appeared to be met, but the application did not proceed due to the lack of crucial evidence (eg. victim testimony);
- in an earlier case the DO criteria appeared to be met, but the application did not proceed due to plea negotiation;
- a previous DO application was unsuccessful although most of the criteria were met;
- DO criteria were met but a definite sentence was given;
- DO criteria were not met, but factors suggest that next offence due to repetition and/or seriousness may be appropriate for an application to be made:
    - a serious personal injury offence but insufficient pattern of similar conduct or discretionary factors; or
    - not a serious personal injury offence, but related indicators of sexual motivation, compulsive behaviour escalating offence pattern, psychiatric treatment.

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NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

OCCUPATIONAL HEALTH AND SAFETY ACT - DISCLOSURE TO THE CROWN

NATURE OF DOCUMENT:	CHECKLIST
FIRST ISSUED:	UNDATED
LAST SUBSTANTIVE REVISION:	UNDATED
EDITED / DISTRIBUTED:	SEPTEMBER 3, 2002

OCCUPATIONAL HEALTH AND SAFETY ACT AND RELATED STATUTES

DISCLOSURE TO CROWN - CHECKLIST

ATTACHMENTS

1. Crown Sheet
2. Informations
3. Statement of Accused
4. Statements of Witnesses who may testify for the Crown
5. Statements of Witnesses who may be Defence witnesses
6. Statements of any other potential witness whether they are believed relevant or not
7. Results of name search at Registry of Joint Stocks Companies and copies of certificates (originals kept as exhibits)
8. Notes of all investigators
9. Record of past related/relevant convictions
10. Photographs (originals kept as exhibits - one copy for each of Crown, Court and each Defendant
11. Exhibit List showing continuity history
12. Expert reports
13. Lab reports
14. Copies of documents
15. Copies of relevant acts and regulation and industry standards to be relied on
16. Search Warrants
17. Search Warrant Informations
18. Report to Justice
19. Hospital Records in the event of injuries or death
20. Estimates of damage
21. List of dates witnesses are unavailable for Court
22. Contact addresses and telephone numbers of witnesses
23. List of relevant recent sentence decisions (be prepared to discuss specific sentence range with Crown)
24. Other material not otherwise listed
25. Additional material which is relevant as a result of further investigation or omission (disclosure is a continuing obligation which is time sensitive)

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

PARENTAL SUPPORT
- YOUNG VICTIMS / WITNESSES

NATURE OF DOCUMENT: PPS MANAGEMENT DIRECTIVE

FIRST ISSUED: DECEMBER 13, 1989

LAST SUBSTANTIVE REVISION: DECEMBER 13, 1989

EDITED / DISTRIBUTED: SEPTEMBER 3, 2002

PARENTAL SUPPORT FOR YOUNG VICTIMS / WITNESSES OF CRIME

In cases involving young victims or witnesses of crimes, this Service has followed an informal policy of paying the expenses incurred by a parent who attends court with their child for the purpose of providing moral support in that stressful situation. The Service wishes to formalize this policy and inform Crown Attorneys and the police in this regard. This policy would include situations where the victim is an adolescent, or where his or her family resides outside the Province.

In such circumstances, the Service is prepared, when requested, to cover the costs of one parent's transportation and living expenses while travelling to and being present with their child at the court appearance for the purpose of providing moral support.

All Chiefs of Police and R.C.M.P. Detachment Commanders are asked to inform their staff of this policy.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

INVESTIGATION / PROSECUTION OF POLICE OFFICERS

NATURE OF DOCUMENT:	PPS MANAGEMENT DIRECTIVE
FIRST ISSUED:	NOVEMBER 15, 1991
LAST SUBSTANTIVE REVISION:	JULY 1, 2002
EDITED / DISTRIBUTED:	SEPTEMBER 3, 2002

PRE-CHARGE ADVICE IN REGARD TO CRIMINAL INVESTIGATIONS (AND RESULTING PROSECUTIONS) OF POLICE OFFICERS

Pre-charge advice to a police force (whether municipal or the R.C.M.P.) with respect to a criminal investigation of a member of a police force will be provided by a Crown Attorney from a region other than where the officer being investigated works, or by a member of the Special Prosecution Section.

If the investigation results in a charge being laid, the ensuring prosecution will be conducted by a Crown Attorney from a region other than where the accused works, or by a member of the Special Prosecution Section.

The purpose of this policy is to avoid any perception that the officer being investigated or prosecuted might receive preferential treatment because of a working relationship he/she has with a particular Crown Attorney or Crown Attorneys' Office.

Any such file should be referred through the Chief Crown Attorney for the region where the charge is laid to the Deputy DPP for assignment.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

PROVISION OF INFORMATION TO THE EAST COAST FORENSIC PSYCHIATRIC HOSPITAL

NATURE OF DOCUMENT: DPP DIRECTIVE

FIRST ISSUED: APRIL 1, 2001

LAST SUBSTANTIVE REVISION: APRIL 1, 2001

EDITED / DISTRIBUTED: SEPTEMBER 3, 2002

Policy on Provision of Information to the East Coast Forensic Psychiatric Hospital

Whenever an offender is required by court order to attend the Provincial Forensic Psychiatric Service (ECFPH)assessment, treatment and/or maintenance by the Sexual Offender Program (SOP) or for a pre-sentence risk assessment under the PPS and ECFPH Memorandum of Agreement, the Crown Attorney responsible for the case shall, as soon as possible, provide the following documents to the ECFPH:

(1) The Crown Sheet pertaining to the current offence and the Crown Sheet for any other sexual offence committed in Nova Scotia by the offender;

(2) The CPIC record of the accused; and

(3) The victim's statement(s) in relation to the current offence(s) and the victim's statement(s) in relation to the other cases for which Crown Sheets are provided under paragraph (1) herein.

It is understood that the victim's statements of the crime are sensitive documents, and that respect for the **privacy of victims must remain paramount**. However, these documents are crucial to the accuracy and effectiveness of assessment and treatment with sexual offenders. There are typically small details included in the victim's statement that, while perhaps only minimally relevant to the prosecution of a case (and thus appropriately not represented in the summary of facts), are central to the **effective interviewing** and assessment of a sexual offender for the purposes of determining risk and **breaking denial** (the first stage of treatment).

1. In order to protect the **privacy of victims** as much as possible victim's statements are:

   (i) to be forwarded to Probation Services in a **sealed envelope** to be forward to the office of the ECFPH; or

   (ii) to be sent to ECFPH directly from the Crown Attorney's office upon a guilty plea or a finding of guilt or sentencing, as the case may be.

2. A process has been established at ECFPH to ensure that the confidentiality of victim statements will be maintained once they are received by the ECFPH, Sexual Offender Program.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

ROUTINE ACCESS
(Access to Administrative and Operational Records Without a FOIPOP Application)

NATURE OF DOCUMENT:	PPS MANAGEMENT DIRECTIVE
FIRST ISSUED:	October 16, 2003
LAST SUBSTANTIVE REVISION:	October 16, 2003
EDITED / DISTRIBUTED:	October 23, 2003

1. POLICY STATEMENT

This "Routine Access" policy for the Public Prosecution Service is designed to provide persons with an opportunity to obtain certain categories of records without the need for a *Freedom of Information and Protection of Privacy Act* (FOIPOP) Application. It shall be administered in accordance with the following principles:

- **Personal Privacy**

  Records containing the personal information of third parties as defined in the *FOIPOP Act* will not be disclosed by the Public Prosecution Service outside the *FOIPOP Act*, unless the personal information has been severed.

- **Timeliness**

  The Public Prosecution Service will respond to any "Routine Access" request in a reasonable and timely fashion.

- **Cost Recovery**

  Fees for the reproduction and provision of records may be charged where authorized by policies, regulations, or statutes.

- **Transparency**

  This policy will be made available to the public.

- **Reasonableness**

  This policy will apply only to reasonable requests.

2. DEFINITIONS

Routine Access is the routine or automatic release, in full or in part, of certain types of administrative or operational records as a matter of course in response to a request without the need for a formal application for records under the *FOIPOP Act*.

Active Dissemination is the periodic and proactive release of information or records in the absence of a request using mechanisms such as the Internet and libraries.

FOIPOP Access is the release of a record in response to a formal FOIPOP application made under the *Freedom of Information and Protection of Privacy Act.*

A Record "includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by graphic, electronic, mechanical or other means, but does not include a computer program or any other mechanism that produces records". (Section 3(1) (k) *FOIPOP Act*)

3. POLICY OBJECTIVES

The objective in implementing this policy is to make certain records routinely accessible without additional administrative time being required to fulfill "Routine Access" requests . It is also to provide a greater certainty of access for those requesting information and to reflect the spirit of openness and accountability of the FOIPOP Legislation.

4. APPLICATION

This policy applies to all staff and to all records designated under this policy in accordance with the attached Appendix A.

This Routine Access policy applies only to records created after October 23, 2003.

This policy shall apply to requests for reasonable quantities of records and shall not apply to a request for more than 50 pages of records in a particular category and/or time period. Repetitive requests by an individual for significant volumes of records or the separation of a request into several small requests totalling a large volume, shall not be subject to the policy. It is important to ensure that the application of the Routine Access policy of the Service not unduly interfere with the day-to-day operations of the Service.

Requests made under Routine Access do not apply to information subject to exemptions under the *Act.*

Personal information may be severed with the same criteria and in the same manner as requests made under the *FOIPOP Act.*

5. POLICY DIRECTIVES

Staff will be advised of the existence of the policy, once approved by the Public Prosecution Service Management Committee. A memorandum advising of the existence of the policy and the procedure to be followed if a request is received from the public or media under the policy for records subject to the Routine Access policy will be disseminated.

The requests may be handled by the person designated as having the responsibility of responding to Routine Access requests.

A tracking system will be designed to keep track of the records provided through Routine Access.

6. POLICY GUIDELINES

Once a request for "Routine Access" has been received by a designated person that person shall review the request and determine if the records are within the schedule of those designated. If the policy does not apply to the request, a response to the requester shall be provided promptly and shall indicate what other avenues may be available to obtain the information, for example a FOIPOP Application. If the policy applies to the request, the records shall be provided to the requester within a reasonable period of time, but no later than 30 days from receipt of the request.

7. ACCOUNTABILITY

The Director of Public Prosecutions shall be accountable for the implementation of this policy.

8. COMPLIANCE

The FOIPOP Administrator shall be responsible for ensuring compliance with this policy.

9. EVALUATION

The "Routine Access" Program established under this policy shall be evaluated on an annual basis by the FOIPOP Administrator.

10. REFERENCES

Requests made under the Routine Access policy will be subject to the following:

- Section 27 of the *FOIPOP Act*, which sets the parameters for dealing with personal information.

- Public Prosecutions Act, which sets out the parameters of the mandate of the Service.
- Fatality Investigations Act, which sets the parameters for the release of autopsy reports.

11. INQUIRIES

Inquiries made pursuant to this policy should made in writing and addressed to FOIPOP Administrator, Public Prosecution Service, 1505 Barrington Street, Suite 1225, Maritime Centre, Halifax, Nova Scotia, B3J 3K5 or by telephone at 424-4032.

Appendix A

Records Routinely Accessible

General Requests

- the Public Prosecution Service will provide readily available statistics upon verification that the information does not have personal information
- general information on the structure and mandate of the Service
- Occupational Health and Safety Routine Inspection Reports

Human Resources:

General:

- organizational charts with position titles
- generic information of benefits and hours of work
- job descriptions, pay scale, classification of positions (unionized, non-unionized)
- personal service contracts of individuals not appointed pursuant to the Civil Service Act, excluding personal information and service or product trade secrets

Selection and Hiring process:

- number of applicants for position
- number of persons interviewed
- name of successful candidate, once offer of employment has been accepted

Finance and Administration

Expense/Travel claims:

- a summary of travel expenses for individuals for a three month period within the current fiscal year and for a maximum of three individuals in one department at any one time, subject to Sections 4, 7, 14, 15 , 16 and 20 of the *FOIPOP Act*

Other expenses:

- cost of renovations for specific offices carried out within the previous six months, subject to Sections 4, 7,14,15 and 16 of the *FOIPOP Act*
- contracts for construction and/or renovations of Public Prosecution Service facilities place), subject to Sections 4, 7,14,15 and 16 of the *FOIPOP Act*
- cost of special or specific events (ie, conferences, workshops, training within three months of event having taken place), subject to Sections 4, 7,14,15 and 16 of the *FOIPOP Act*
- cost of sending a delegation out of the province or out of the country), subject to Sections 4, 7,14,15 and 16 of the *FOIPOP Act*
- overtime expenditures (current year-to-date) subject to Sections 4, 7, 14, 15 and 16 of the *FOIPOP Act*
- contracts for goods and services, subject to Sections 4, 7,14, 15 and 16 and 20 of the *FOIPOP Act*

Note: Section 4 of the *FOIPOP Act provides that the Act does not apply to records of prosecutions for which all proceedings have not been completed.* Section 7 of the *FOIPOP Act provides that where the record contains information which would otherwise be exempt under Section 15 if the record were in the custody or control of the public body, that confirmation or denial of the existence of the record is refused.* Section 14 of the *FOIPOP Act provides* for refusal to release a record which contains advice. Section 15 of the *FOIPOP Act provides for refusal to release a record of a law enforcement nature. Section 16 of the FOIPOP Act provides for refusal to release a record if it is subject to solicitor/client privilege.*

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

REVIEW BOARD HEARINGS

NATURE OF DOCUMENT:	PPS MANAGEMENT DIRECTIVE
FIRST ISSUED:	JUNE 20, 2001
LAST SUBSTANTIVE REVISION:	JUNE 20, 2001
EDITED / DISTRIBUTED:	SEPTEMBER 3, 2002

CONDUCTING REVIEW BOARD HEARINGS

Effective July 1, 2000, all Review Board hearings will be conducted by a Halifax Region Crown Attorney. An exception to this practice may be made in cases where considerable preparation time and/or a lengthy Review Board hearing is anticipated. The decision to make an exception to the standard practice will be made on a consensus basis by the Chief Crown Attorney (Halifax) and the Chief Crown Attorney for the region wherein the incident occurred.

No later than June 30, 2000, Crown Attorneys are to transfer the necessary information from their files for cases involving Review Board hearings to the Halifax Crown Attorneys' Office - Attention: John Scott. The Halifax office will keep the local offices apprised of the status of their cases before the Review Board by sending a copy of the Review Board's disposition.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

SENTENCING - SUPREME COURT

NATURE OF DOCUMENT:	PRACTICE MEMORANDUM
FIRST ISSUED:	UNDATED
LAST SUBSTANTIVE REVISION:	UNDATED
EDITED / DISTRIBUTED:	SEPTEMBER 3, 2002

SENTENCING – SUPREME COURT

This practice memorandum applies to cases where there has been an interval of more than two clear days between the finding of guilt or the plea of guilty and the sentencing hearing.

****

Whereas the Judges of the Supreme Court recognize sentencing to be a duty of considerable responsibility and are desirous of being well informed prior to the sentencing hearing.

And whereas the Judges of the Supreme Court are sensitive to the concerns of the Bar that resources do not permit extensive prehearing memoranda.

And whereas it is the intention that the following practice memorandum balance these concerns:

> "At least two clear days before a sentencing hearing, unless waived by the presiding judge, counsel shall submit in writing to the judge who will preside at the hearing:
>
> (1) A brief statement of facts;
>
> (2) A brief statement of the position of counsel which shall include suggestions as to the appropriate sentence or range of sentence;
>
> (3) The criminal record of the accused;
>
> (4) A notation of any cases on which counsel rely."

At the time of entering a plea of guilty or of a finding of guilt questions will be addressed to counsel in accordance with the attached check list.

JUSTICES' SENTENCING CHECK LIST

When setting a date for sentencing, the presiding Justice may wish to consider questioning counsel on the following topics:

I. PRE-SENTENCE REPORT (P.S.R.)

Is either counsel requesting a Pre-Sentence Report? • •Crown • •Defence

Reason for Request: ______________________________

• •P.S.R. ordered

II. CIRCUMSTANCES OF THE OFFENCE(S)

(This question need only be asked if there has been a Guilty Plea)

Does Defence counsel anticipate any dispute with the facts? • •Yes • •No

If so, what allegations of the circumstances of the offence(s) are likely to be disputed? ____

Does the Crown intend to call evidence re disputed fact(s)? • •Yes • •No

Does the Defence intend to call evidence re disputed fact(s)? • •Yes • •No

III. CRIMINAL RECORD OF ACCUSED

Is the Crown alleging a prior criminal record? • •Yes • •No

If yes: Is Defence aware of the alleged record? • •Yes • •No

If yes: Is Defence contesting the alleged record? • •Yes • •No

If yes: Will Crown call evidence on the disputed record? • •Yes • •No

Will Defence call evidence on the disputed record? • •Yes • •No

IV. VICTIM IMPACT STATEMENT

Will a V.I.S. be introduced? • •Yes • •No

If Yes: Does Defence wish to cross-examine on V.I.S.? • •Yes • •No

N.B. Counsel to advise if additional time is required.

V. DEFENCE EVIDENCE

Will there be any Defence evidence, e.g. character? • •Yes • •No

VI. TIME NEEDED FOR SENTENCE HEARING ____ Hours

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

SIGN LANGUAGE INTERPRETER SERVICES

NATURE OF DOCUMENT: PPS MANAGEMENT DIRECTIVE

FIRST ISSUED: JANUARY 1, 2001

LAST SUBSTANTIVE REVISION: JANUARY 1, 2001

EDITED / DISTRIBUTED: SEPTEMBER 3, 2002

SIGN LANGUAGE INTERPRETER SERVICES FOR DEAF AND HARD-OF-HEARING PERSONS

I. Policy Statement

The Public Prosecution Service is committed to ensuring that persons who are Deaf and hard-of-hearing benefit equally from services offered to the general public and will make reasonable accommodation for the provision of interpreter services .

II. Definition

Interpreter Services may be provided through a variety of mediums and these are outlined in the attached.

III. Policy Objectives

The purpose of this policy is to ensure reasonable steps are taken to provide services to persons who are Deaf and hard-of-hearing in a fair and non-discriminatory manner through the provision of interpreter services.

IV. Application

This policy applies to all activities of the Public Prosecution Service.

V. Policy Directives

1. The Public Prosecution Service will make reasonable accommodation for the provision of interpreter services to ensure effective communication in the delivery of Government services to persons who are Deaf and hard-of-hearing.

2. To ensure effective communication in the delivery of Government services to persons who are Deaf and hard-of-hearing, consideration will be given to factors such as:

    a. The complexity and importance of the information to be communicated; and
    b. The context in which the communication takes place.

3. Elsewhere in this manual is a Directive of the Attorney General entitled "Protocol for Investigation of and Prosecution of Cases Involving Persons with Special Communications Needs" For purpose of this policy and for greater clarity the Directive includes the provision of the Interpretative

Services for persons who are deaf and hard of hearing.

VI. Accountability

The Director of Public Prosecutions is responsible for ensuring compliance with this policy.

VII. Monitoring

The Public Prosecution Service shall review this policy and any procedures created and implemented by the Service on a periodic basis to ensure compliance with the Government of Nova Scotia Sign Language Interpreter Services Policy for Deaf and hard-of-hearing Nova Scotians.

DEPARTMENT OF JUSTICE, PROVINCE OF NOVA SCOTIA

SUBJECT: **Sign Language Interpreter Services Policy for Deaf and Hard-of-Hearing Nova Scotians**

Approval Date:	
Approved by:	
Effective Date:	*January 1, 2000*

Appendix "B"

Correctional Services Division:

1. Custody
   - A. Designated inmate programs
   - B. Direction regarding temporary absences
   - C. Medical treatment

2. Community Corrections
   - A. Pre Sentence and Pre Disposition Reports
   - B. Service of designated Court Orders
   - C. Identified supervision interviews

Court Services Division:

1. Court hearings/trials/appeals, as follows:
   - A. Criminal matters
     - i For the accused and
     - ii. For witnesses while on the stand
   - B. Family matters, as ordered by the Court
   - C. Civil matters, as ordered by the Court
2. Mandatory court programs
3. Mediation offered through the Family Division

Human Resources Division:
Job Interview Process

Victim Services
Identified Programs

Other
Restorative Justice initiatives

Definitions

The following definitions are provided for the understanding and proper implementation of this policy:

American Sign Language (ASL)
A visual gestural language with its own linguistic structure and grammar; the language used by most Deaf people in the US and Canada.

Computerized note-taking
One form of technical assistance provided to persons who are hard of hearing or late deafened. Computer note-takers are commonly used in large group or educational settings. A hearing person sits beside the hard of hearing or late deafened person and types information verbatim onto a laptop computer. The user of this service then reads the screen as information is being written and is thus able to more fully participate. When a group is relying on this service, information can be projected onto a large overhead screen for all to view simultaneously.

Deaf
In recent years the capital "D" Deaf has emerged as the name preferred by people who identify with, and belong to a group with a culture distinct from that of non-Deaf people. Like any cultural group, Deaf people have a language and set of social norms, behaviours and folklore which reflect the values of their group.

deaf
When written, "small d" deaf is becoming more accepted as a reference to a hearing deficit only and detached from any discussion of culture and/or language. One term represents a social-cultural perspective and the other a medical-pathological view.

Deaf-Blind
Describes a person who is unable to hear and unable to see. However, very few deaf-blind people are both profoundly deaf and totally blind.

Hard-of-hearing
A person who is unable to follow a conversation between three or more people without the assistance of a hearing aid.

Hearing impairment
A diagnosed auditory deficit ranging from mild to profound that may or may not respond to medical intervention or amplification and that results in functional limitations in one or more areas of daily living.

Interpretation
The process of changing a message from one language to another, conveying all

essential elements of meaning and maintaining dynamic equivalence.

Translation
The process of changing a message in "frozen form" (written, videotape, audiotape) of one language to a frozen form of another language.

Intervenor
A person who provides interpretation, orientation and mobility services to a person who is Deaf-Blind.

Late-deafened
Describes a person who becomes deafened later in life due to illness, accident, disease or the normal process of aging.

EXCERPTS

Report of Task Force on Interpreter Services (1992)

The following are excerpts of recommendations made by the Task Force on Interpreter Services (1992). The major thrust of the recommendations of the Task Force led to the establishment of the Interpreter Services Training Program at the Nova Scotia Community College, Halifax Campus.

> ". . . That the Task Force recommend that the Province replace its current patchwork of policies respecting provision of interpreter services to the Deaf; and that a new comprehensive policy be created on the basis of equality of opportunity and access for the Deaf in the following areas: i) education, ii) medical, iii) legal, iv) employment and v) interaction with any government department, agency, board or commission."
>
> " . . . That the Task Force urge the Province (of Nova Scotia) to establish a global provincial government budget for the provision of funding for interpreter services under the above policy and that such budget be overseen by one central government agency."
>
> " . . . That, to ensure quality of interpreter services, the Society of Deaf and Hard of Hearing Nova Scotians be recognized as the appropriate service agency of the deaf with which to contract (Sign) Language interpreters."
>
> " . . . That the (Province of Nova Scotia) undertake an awareness campaign to promote its policies regarding provision of interpreter services for the deaf, and
>
> Further, that a general awareness policy be implemented to discuss the communications needs of the deaf and promote the idea of employees taking ASL courses, especially in agencies, departments or firms where there is regular interface with the deaf public or with fellow deaf employees."

Extension of Contract for Services

THIS AGREEMENT, made this 15th day of November, 2000.

BETWEEN	**HER MAJESTY THE QUEEN** in right of the Province of Nova Scotia, as represented by **the Deputy Minister, Office of the Premier** (hereinafter called the "Province")
AND	**The Society of Deaf and Hard of Hearing Nova Scotians** (hereinafter called the "Contractor")

WHEREAS the Province and the Contractor entered into an Agreement dated January 1, 2000, with respect to the provision of interpreter services to all departments who are involved in contracting for such services;

AND WHEREAS that Agreement provided for a term of January 1, 2000 to January 1, 2001;

AND WHEREAS that Agreement provided for extension by mutual agreement in written form;

NOW THEREFORE WITNESSETH this Agreement in consideration of the mutual covenants and agreements herein contained and the sum of One Dollar ($1.00), the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties covenant and agree as follows:

TERM

1. The term of the Agreement dated January 1, 2000 shall be extended from January 1, 2001 to January 1, 2002 unless terminated as per the conditions of the Agreement dated January 1, 2000 or extended by mutual written agreement.

NOTICE

2. Any notice pursuant to this Agreement shall be valid if given in writing by postage prepaid registered letter addressed in the case of the Province to the Deputy Minister, Office of the Premier:

   P.O. Box 726
   Halifax NS B3J 2T3

   or such other address as is communicated in writing to the Parties.

CONDITIONS

3. Subject to the amendments found in paragraphs 1 and 2 above, all terms and conditions of the Agreement dated January 1, 2000 shall apply with full force and effect during the term of this extension.

IN WITNESS WHEREOF the Parties have executed this Agreement on the day and year first above written.

SIGNED, SEALED)
AND DELIVERED) **HER MAJESTY THE QUEEN** in
in the presence of :) Right of the Province of Nova Scotia
)
)
____________________) Per: ____________________
Witness) Deputy Minister
) Office of the Premier
)
)
____________________) Per: ____________________
Witness) The Society of Deaf and Hard of Hearing
Nova Scotians

SCHEDULE A

Process for Accessing Interpreter Services

1. The Deaf client requests that the department contact person call the Interpreter Coordinator at SDHHNS to book an interpreter. Alternately, the client may contact the Interpreter Coordinator at SDHHNS and provide information on the appointment. The Interpreter Coordinator shall contact the appropriate department to confirm the particulars prior to assigning an interpreter.

2. The Interpreter Coordinator obtains the relevant information needed to fully meet all the interpreting requirements of the assignment/appointment.

3. The Interpreter Coordinator will endeavor to book the client's interpreter of choice. If the first choice is not available the Interpreter Coordinator will endeavor to book other interpreters of the client's choosing. Where ever possible adequate notice will be given to the Interpreter Coordinator for booking interpreters.

4. The Contractor will invoice the relevant department bi-weekly for the interpreter services provided.

5. Each Department will have specific information requirements and procedures for invoicing.

6. The Contractor will endeavour to meet the service needs of the Province. If an interpreter is not available, the appointment may be rescheduled if the client so wishes. It is recognized that demand for interpreting services may exceed the supply.

7. Situations identified as emergencies will be given priority over other assignments.

SCHEDULE B

Society of Deaf and Hard of Hearing Nova Scotians - Standards for Interpreter Services

1. Society for Deaf and Hard of Hearing Nova Scotians (SDHHNS) interpreters assigned to provincial duties will be:

   i) Screened and approved by the SDHHNS screening committee and at a later date by an interpreting advisory committee established for this purpose.

   ii) Members of the Association of Visual Language Interpreters of Canada (AVLIC) – associated with the Maritime Association of Professional Sign Language Interpreters (MAPSLI) adhering to the AVLIC Code of Ethics.

2. Interpreters will only be scheduled for an assignment for which they have experience e.g. Medical, Legal, Education, Community.

3. The Province (or the Department) will have the right to consult with the Interpreter Coordinator in regards to any concerns that arise in relation to the abilities or qualifications of the assigned interpreter.

SCHEDULE C

Interpreter Services Billing Policy

1. **Invoicing**
The Society of Deaf and Hard of Hearing Nova Scotians will directly invoice the provincial department, agency, board or commission which requested the interpreter services. Billing will be conducted on a bi-weekly basis. Invoices will provide a description of the services provided.

2. **Cost per hour**
The cost of interpreter services is $35 per hour, per interpreter.

3. **Minimum Charges**
The minimum charge time for interpreter services is two (2) hours with subsequent hours being billed to the nearest half hour. Based on the nature of a particular assignment it may be necessary to assign two interpreters to assignments less than two hours in duration.

4. **Continuous Interpreting**
If an assignment requires more than two hours of interpreting, two interpreters may be assigned depending upon the nature of the assignment. This will be discussed and confirmed at the time a request is made by a department for interpreter services.

5. **Cancellations**
When an assignment of two hours or less is cancelled without providing the SDHHNS with at least 24 hours notice, the department requesting the service will be billed for the two hours.

6. **Conferences**
Cancellation of conferences requiring interpreters for long periods of time and/or several interpreters will be invoiced according to the terms agreed upon at the time of the request.

7. **Overdue Accounts**
The SDHHNS will charge interest of two percent per month on invoices that are over 30 days from billing date.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

SPECIAL PROSECUTIONS SECTION - REFERRALS

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SPECIAL PROSECUTIONS SECTION

General

The Trials Branch of the Public Prosecution Service is responsible for the conduct of all prosecutions within the jurisdiction of the Attorney General of Nova Scotia. The Trials Branch consists of the Western Region, the Halifax Region, the Central Region, the Cape Breton Region and the Special Prosecutions Section. This policy addresses the division of operational responsibilities between the Regions and the Special Prosecutions Section.

Initial Responsibility for Cases

The provision of advice and the conduct of cases investigated by members of the R.C.M.P. Commercial Crime and Proceeds of Crime Branches are responsibilities of the Special Prosecutions Section. With the exception of cases investigated by the R.C.M.P. Commercial Crime and Proceeds of Crime Branches, the provision of advice to the police and the conduct of all Criminal Code and provincial statute prosecutions are the responsibility of the Region in which the offence(s) is alleged to have occurred unless the case is transferred to the Special Prosecutions Section in accordance with the provisions of this policy.

Cases Which May be Transferred to the Special Prosecutions Section

Cases which may be transferred to the Special Prosecutions Section are no longer restricted to major frauds, sexual assaults or complex provincial statute prosecutions. Generally, cases appropriate for transfer will be major crimes involving substantial preparation for court and lengthy court proceedings. Any type of case which places an undue burden on the resources of the local office may be transferred to the Special Prosecutions Section. Cases which create a conflict for the local Crown Attorneys' office may also be appropriate for transfer to the Special Prosecutions Section.

Transfer Process

A Crown Attorney responsible for the conduct of a case which s/he feels is appropriate for transfer to the Special Prosecutions Section may recommend to their Chief Crown Attorney that the case be transferred.

Only the Chief Crown Attorney of the Region initially responsible for the case may, if s/he agrees with the local Crown Attorney's recommendation, refer the case to the Special Prosecutions Section.

Cases referred to the Special Prosecutions Section shall be directed to the Chief Crown Attorney (Special Prosecutions). The Chief Crown Attorney (Special Prosecutions), upon receipt of a case referral from a Chief Crown Attorney (Region) will review the case and assess whether the Special Prosecutions Section will assume responsibility for the case.

The Chief Crown Attorney (Special Prosecutions) will generally advise the Chief Crown Attorney (Region) of his decision within one week of receipt of the referral.

In the case of a disagreement regarding which office should be responsible for the conduct of a case, the matter will be referred to the Director of Public Prosecutions for decision.

Timing of Transfers

Cases should be recommended for transfer as early in the criminal trial process as possible. Due to the nature of the cases handled by the Special Prosecutions Section, the earlier the Section receives a request to assume responsibility for a file, the greater the likelihood that the Section will be able to do so.

Once the Special Prosecutions Section assumes responsibility for a file, it will not be returned to the Region save and except in exceptional circumstances and with the consent of the Chief Crown Attorney of the Region from which it was transferred or the direction of the Director.

Shared Responsibility

(a) When the Special Prosecutions Section assumes responsibility for a file, the local Crown Attorneys' office may still be called upon to handle most uncontested court appearances for the case.

(b) the local Crown Attorney may wish to retain responsibility for a case but have a member of the Special Prosecutions Section serve as co-counsel. A request for a member of the Special Prosecutions Section to serve as co-counsel on a case will follow the same process as that for a case transfer.

NovaScotia
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

VACANCY PUBLICITY
- CHIEF CROWN ATTORNEY POSITIONS

NATURE OF DOCUMENT:	PPS MANAGEMENT DIRECTIVE
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VACANCY PUBLICITY -- CHIEF CROWN ATTORNEY POSITIONS

POLICY:

The Public Prosecution Service is committed to employment equity in filling all vacancies within the Service. All vacancy competitions will be fair and reasonable, free from influence, conducted in accordance with the principles of merit and equal opportunity and conform to government policy and applicable legislation. Employees and members of the public will be given reasonable access to vacancy publicity and be granted the opportunity to have their qualifications considered for vacancies for which they apply. Position vacancy notices prepared for competition publicity will provide a clear description of current position requirements and minimum qualification standards.

PROCEDURE FOR FILLING A VACANCY:

I. Internal Restricted Competition

(a) Based on operational requirements and subject to the approval of the Director of the Public Prosecution Service, the Service will initially restrict competition to permanent staff of the Public Prosecution Service. A vacancy notice will be 'posted' within the Public Prosecution Service for two weeks (fourteen calendar days). Posting of the vacancy notice will be effected by the Human Resources Officer forwarding the Vacancy Notice by e-mail to each permanent Chief Crown Attorney and the Deputy Director.

(b) Interested candidates must forward application documentation to the office address designated on the posting not later than the closing date. Applications received after the closing date will not be considered. Previously submitted applications will not automatically be entered into a posted competition. The onus is on the candidate to respond to a posted vacancy. All candidate submissions to internal postings will be acknowledged by the Human Resources Division.

(c) If two or more candidates apply for the position, in consultation with the Human Resources Division, an eligibility list will be prepared which includes those candidates who meet the posted requirements for the position and have demonstrated satisfactory job performance as a Chief Crown Attorney or Associate Deputy Director, as determined by the Public Prosecution Service. The eligibility list will be provided to the Director of Public Prosecutions who will convene a Selection Panel and interview the eligible candidates. The relative merit of candidates will be assessed based on interview evaluations, candidate experience and the results of job related assessment and performance information. Based on these collective considerations, the candidate standing highest in order of merit is identified and recommended for the position.

The Director of Public Prosecutions will consider the Selection Panel's recommendation, the employee's wishes and circumstances, and the operational requirements of the Service in deciding whether or not to approve the transfer. A transfer request approved by the Director of Public Prosecutions will be carried out in consultation with the Human Resources Division.

(d) If only one candidate applies for the vacancy opportunity, the Director of Public Prosecutions will assess whether the candidate meets the posted requirements for the position and has demonstrated satisfactory job performance as a Chief Crown Attorney or Associate Deputy Director of Public Prosecutions. The candidate will have the opportunity to meet with the Director of Public Prosecutions and discuss any relevant operational concerns and position requirements.

The Director will consider the information noted in (c) above, the employee's wishes and circumstances, and the operational requirements of the Service in deciding whether or not to approve the transfer. A transfer request approved by the Director of Public Prosecutions will be carried out in consultation with the Human Resources Division.

(e) The Public Prosecution Service - i) realizes that transfer is a key opportunity in maintaining and enhancing employee performance levels and in contributing to overall career development, ii) recognizes that special or compassionate circumstances occur periodically wherein it is desirable to approve transferring individual staff members, upon request, to vacant positions, to accommodate changing personal situations, job requirements, health considerations, etc.

(f) Chief Crown Attorneys or the Associate Deputy Director of Public Prosecutions who change residence as a result of their being granted a transfer or are successful through competitive examination for appointment to a vacant position are not eligible for relocation expenses or allowances unless authorized by the Director of Public Prosecution Service.

(g) Crown Attorneys, Senior Crown Attorneys or Chief Crown Attorneys are not entitled to salary adjustment upon being granted a transfer pursuant to this policy.

2. External Open Competition

(a) Vacant positions, not filled by internal transfer, are normally publicized for three (3) consecutive weeks in the Department of Human Resources Employment Opportunities Bulletin, a weekly publication distributed to provincial government offices and Canada Employment & Immigration Centres province wide.

(b) In relation to external open competitions the Nova Scotia Department of Human Resources Affirmative Action Staff will be notified to identify and refer qualified Affirmative Action candidates to competitions posted in the Department of Human Resources Employment Opportunities Bulletin. The Affirmative Action Policy includes, but is not limited to, the following target groups:

Aboriginal Persons
Blacks and other Racially Visible Persons
Persons with Disabilities
Women

The Public Prosecution Service is committed to equality and diversity in the workplace where differences are understood to be strengths not deficiencies; where the strength of diversity is seen as an advantage; and where the accommodation of human resource systems, activities and behaviours of individuals and groups are necessary to achieve these employment equity objectives.

(c) In relation to external open competitions, depending upon the need, the use of employment agencies and/or advertising in professional journals and national, provincial or local newspapers may be considered in consultation with the Department of Human Resources.

(d) In relation to external open competitions application documents and information must be received by the office designated on the posting not later than the closing date. Applications received after the closing date will not be considered. Previously submitted applications will not automatically be entered into a posted competition. The onus is on the applicant to respond to posted vacancies.

(e) The Service will follow the government's fair hiring guidelines in determining who will be granted an interview and which candidate interviewed will be recommended for appointment.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

VACANCY PUBLICITY
- CROWN ATTORNEY POSITIONS

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VACANCY PUBLICITY POLICY: CROWN ATTORNEY POSITIONS

POLICY:

The Public Prosecution Service is committed to employment equity in filling all vacancies within the Service. All vacancy competitions will be fair and reasonable, free from influence, conducted in accordance with the principles of merit and equal opportunity and conform to government policy and applicable legislation. Employees and members of the public will be given reasonable access to vacancy publicity and be granted the opportunity to have their qualifications considered for vacancies for which they apply. Position vacancy notices prepared for competition publicity will provide a clear description of current position requirements and minimum qualification standards.

PROCEDURE FOR FILLING A VACANCY:

I. Internal Restricted Competition

(a) Based on operational requirements and subject to the approval of the Director of the Public Prosecution Service, the Service may initially restrict competition to permanent staff of the Public Prosecution Service. The decision whether to initially restrict competition to permanent staff of the PPS will be made on a case by case basis by the Director. A vacancy notice will be 'posted' within the Public Prosecution Service for two weeks (fourteen calendar days). Posting of the vacancy notice will be effected by the Human Resources Consultant forwarding the Vacancy Notice by e-mail to each Chief Crown Attorney, who in turn will distribute it to all permanent Senior Crown Counsel, Senior Crown Attorneys, and Crown Attorneys.

(b) Interested candidates must forward application documentation to the office address designated on the posting not later than the closing date. Applications received after the closing date will not be considered. Previously submitted applications will not automatically be entered into a posted competition. The onus is on the candidate to respond to a posted vacancy. All candidate submissions to internal postings will be acknowledged by the Human Resources Division.

(c) This policy applies to transfers by a Senior Crown Attorney, Senior Crown Counsel or Crown Attorney from one Municipality to another and/or between any office within a region or Head Office.

(d) If only one candidate applies for the vacant opportunity, the Chief Crown

Attorney to whom the vacant position reports will assess whether the candidate is likely to meet the posted requirements for the position and the needs of that office and has demonstrated satisfactory job performance as determined by the PPS. The Chief Crown Attorney to whom the vacant position reports may choose to meet with the candidate to discuss any relevant operational concerns and position requirements.

The Chief Crown Attorney to whom the vacant position reports will submit his/her comments and recommendations to the Director of Public Prosecutions.

The supervising Chief Crown Attorney of the candidate applying for an internal transfer, or where applicable, the Deputy Director, will provide the Director with his/her assessment of the operational impact of approving the transfer request on the candidate's current office and region.

The Director will consider the comments and recommendations of the Chief Crown Attorney(s), [and, where applicable, the Deputy Director's], the employee's wishes and circumstances, and the operational requirements of the Service in deciding whether or not to approve the transfer. A transfer request approved by the Director of Public Prosecutions will be carried out in consultation with the Human Resources Division. Where a transfer is not approved, the vacancy will be filled by an external, open competition.

(e) If two or more candidates apply for the position, in consultation with the Human Resources Division an eligibility list will be prepared which will include those candidates who meet the posted requirements for the position and who have demonstrated satisfactory job performance as determined by their managers within the Public Prosecution Service. The eligibility list will be provided to the Chief Crown Attorney to whom the vacant position reports. That Chief Crown Attorney will convene a selection panel to consider the applications. The relative merit of candidates will be assessed based on interview evaluations, candidate experience and the results of job-related assessments and performance information. Based on these collective considerations, the selection panel will rate the candidates.

The Chief Crown Attorney to whom the vacant position reports will submit the selection panel's report and his/her comments and recommendation based on his/her assessment of the operational needs of the office and region to the Director.

The supervising Chief Crown Attorney of the candidate recommended for the transfer (or where applicable, the Deputy Director) will provide the Director with his/her assessment of the operational impact of approving the transfer request on the candidate's current office and region.

The Director of Public Prosecutions will consider the selection panel's recommendation, the comments and recommendations of the Chief Crown Attorneys [and Deputy Director's, if applicable] involved in the process, the employee's wishes and circumstances, and the operational requirements of the Service in deciding whether or not to approve the transfer. A transfer request approved by the Director of Public Prosecutions will be carried out in consultation with the Human Resources Division. Where a transfer is not approved, the vacancy will be filled by an external, open competition.

(f) The Public Prosecution Service recognizes (1) that transfers provide a key opportunity to maintain and enhance employee performance levels and contribute to overall career development, and (2) that special or compassionate circumstances arise periodically wherein it is desirable to approve transferring individual staff members, upon request, to vacant positions, to accommodate changing personal situations, job requirements, health considerations, etc.

(g) The desire of an individual to transfer to a vacant position must be balanced with the operational needs of the Service. To address the operational needs of the Service, other than in exceptional circumstances, applications for transfer will not be approved unless the candidate has served at least three years in his/her current position.

(h) Where a lawyer changes residence as a result of being granted a transfer or is successful through a competitive process for appointment to a vacant position, the lawyer changing residence is not eligible for relocation expenses or allowances unless such expenses are specifically approved by the Director of Public Prosecutions.

(i) The successful candidate is not entitled to a salary adjustment upon being granted a transfer pursuant to this policy.

2. External Open Competition

(a) Vacant positions to be filled by external, open competition are normally publicized for three (3) consecutive weeks in the Department of Human Resources Employment Opportunities Bulletin, a weekly publication distributed to provincial government offices and Canada Employment & Immigration Centres province wide. This notice period will normally run concurrent to the restricted internal competition notice period.

(b) In relation to external open competitions the Nova Scotia Department of Human Resources Affirmative Action Staff will be notified to identify and refer qualified Affirmative Action candidates to competitions posted in the Department of Human Resources Employment Opportunities Bulletin. The Affirmative Action Policy includes, but is not limited to, the following target groups:

Aboriginal Persons
Blacks and other Racially Visible Persons
Persons with Disabilities
Women

The Public Prosecution Service is committed to equality and diversity in the workplace where differences are understood to be strengths not deficiencies; where the strength of diversity is seen as an advantage; and where the accommodation of human resource systems, activities and behaviours of individuals and groups are necessary to achieve these employment equity objectives.

(c) In relation to external open competitions, depending upon the need, the use of employment agencies and/or advertising in professional journals and national, provincial or local newspapers may be considered in consultation with the Department of Human Resources.

(d) In relation to external open competitions application documents and information must be received by the office designated on the posting not later than the closing date. Applications received after the closing date will not be considered. Previously submitted applications will not automatically be entered into a posted competition. The onus is on the applicant to respond to posted vacancies.

(e) The Service will follow the government's fair hiring guidelines in determining who will be granted an interview and which candidate interviewed will be recommended for appointment.

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

WITNESS FEES

NATURE OF DOCUMENT:	PPS MANAGEMENT DIRECTIVE
FIRST ISSUED:	MAY 9, 1995
LAST SUBSTANTIVE REVISION:	JULY 30, 2002
EDITED / DISTRIBUTED:	SEPTEMBER 3, 2002

WITNESS FEES

(A) NON-EXPERT WITNESSES

PROCEDURE

Non-expert witnesses must submit Form W-1 in order to be reimbursed.

Witnesses who wish to make a claim should be advised that they may pick up an application form (W-1) at the Crown Attorney's office[1]. The witness must complete and sign the form, attaching receipts. The witness must submit the form to the local Crown Attorneys' office. The Crown Attorney must sign to approve the claim. (Some offices may appoint a member of the support staff to review claims of less than $1,000 and stamp the Crown Attorney's signature.) Approved claims are to be sent to Gordon Brown, *Manager, Administrative Services*, at Suite 1225, Maritime Centre, 1505 Barrington St., Halifax, B3J 3K5. Mr. Brown will review the claims and forward them to the Department of Justice for payment.

Form W-1

The back of form W-1 sets out the details of what expenses may be reimbursed. Variations, exceeding the allowable expenses and claims for expenses not noted on Form W-1 will not be reimbursed except in unusual circumstances. To recommend special arrangements, the Crown Attorney must complete Form W-2 and have it approved by the Chief Crown Attorney or his delegate.

Accommodations and Airfare

Please note that accommodations and air travel must be pre-approved by the local Crown office. Where overnight accommodations or air transportation is required the witness should be provided Form W-1 with their subpoena. Local Crown Attorneys should elicit the assistance and cooperation of the police in this regard.

Each Crown office **must notify** all hotel(s) in their area, with whom they deal, that the Service will pay only for rooms (at government rates) and meals (to a maximum of $26.50 per day). No other expenses or charges to the room will be paid by the Service (subject to special pre-approved by the Crown Attorney and Chief Crown Attorney on Form W-2). Without limiting the foregoing, the Service shall not pay for movies, alcoholic beverages or phone charges.

Management of the Service currently investigating the prospect of securing preferred air transportation rates for witnesses. We will advise of any changes to procedures regarding air transportation. For the time being please continue to book air transportation through your local agency. The invoice should be sent to the local office. The local Crown Attorney must approve payment of the invoice and then forward it to Gordon Brown, *Manager,*

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[1] Witnesses required to travel by air and or stay overnight are to be sent form W-1 with their subpoena. In practice anyone residing more than 100 miles from the court should be sent form W-1 with their subpoena.

Administrative Services (address is on page 1). Please do not request that the travel agency send the invoice directly to Mr. Brown.

(B) EXPERT WITNESSES

When it is anticipated that the retention of an expert witness to assist in a prosecution will cost more than $1,000.00, Crown Attorneys must obtain the approval of the Chief Crown Attorney accountable for the case before retaining the expert.

Medical doctors compose, by far, the largest group of experts with whom the Service deals. The management of the Service has commenced discussions with the Nova Scotia Medical Society. Our goal is to standardize witness fees for medical practitioners. We will advise of the outcome of these discussions.

For the present, please ensure that the use of experts is kept to a minimum. Where experts have no personal knowledge of the case and are engaged to provide an opinion, the Crown Attorney must negotiate their fee and the maximum number of hours for which the Service will compensate. As noted above, all fees expected to exceed $1,000.00 must be pre-approved by the Chief Crown Attorney or his delegate before the expert is engaged.

For experts with personal knowledge of the case (such as emergency room doctors) please attempt to establish some consistency to the claims. We suggest a standard fee of $150. for a routine court attendance (it may be lower in some areas). Any doctors who claim in excess of this amount should be contacted by the Crown Attorney's office and advised of the usual fee. It is our hope that doctors will agree to accept this standard fee pending the outcome of our discussions with the Medical Society.

For the time being, please use form W-2 for expert witness claims. Please indicate under "Reasons for special arrangement" that the witness is a doctor. The Chief Crown Attorney approval is not required for form W-2 involving a medical doctor unless the fee is expected to exceed $1,000.

SUMMARY

Support Staff

1. Make copies of Form W-1. Have them available for witnesses who request them.

2. Make copies of Forms W-2 and W-3 for use by the local Crown Attorney(s).

3. Contact the local hotel(s) with whom you deal and advise them of our policy regarding witness fees. Confirm your conversation in writing by sending the hotel a copy of form W-1.

4. Contact the local police staff person who prepares subpoenas and request that a form W-1 be sent with the subpoena to any witnesses who resides more than 100 miles from the court. Please ensure that the police understand that form W-1 is not to be sent to all witnesses but just those who live more than 100 miles from court. Please send the local police copies of form W-1 for this purpose. In areas where witness claims forms are currently sent out with the subpoena, please immediately request that this practice be discontinued.

5. Ensure that form W-1 is signed by the local Crown Attorney (or stamped by the appropriate support staff person) before being forwarded to Gordon Brown, *Manager, Administrative Services*.

6. Ensure that invoices for air travel and accommodations are approved by the local Crown Attorney before being sent to Gordon Brown, *Manager, Administrative Services*.

We recognize that by implementing these new procedures as quickly as we are there will undoubtedly be some wrinkles to iron out. Please bring to my attention problems as they arise and we will try to deal with them. We appreciate your cooperation in implementing these new procedures. These procedures are necessary to permit us to document our control of witness expenditures. Evidence of such control is necessary for Public Prosecution Service budget purposes.

It you have any questions please call the Chief Crown Attorney.

WITNESS FEES AND EXPENSES

The forms have permitted the Service to standardize practices around the province and place the onus on the person claiming reimbursement. It is anticipated that minor amendments will be implemented after a further period of time has passed and the PPS in a better position to assess the effectiveness of the forms as currently drafted.

The purpose of this memo is to address some questions which have arisen in one or more offices and which may have troubled other offices. Of course, if there are other questions, please don't hesitate to contact the Chief Crown Attorney.

FORM W-1

1. Witnesses will not be issued a cheque unless **they** (not the Crown Attorney's secretary) sign a W-1 Form certifying the truth of their claim. The only exception to this rule is where the witness is not competent to do so, in which case, the person claiming on behalf of the witness, or the Crown Attorney, should provide an explanation as to why the person is claiming on behalf of the witness.

2. There is no space on Form W-1 for a person to claim their per diem fee. Submission of the Form is sufficient basis for the Service to pay the fee. The Form requests information on what "**date(s)**" the witness attended court. Therefore, we can calculate the per diem fee by multiplying $5.00 by the number of days the witness attended court. A witness is entitled to the $5.00 per diem fee for each day of court attendance but not for days(s) required to travel to get to the court or return home.

3. Other than the $5.00 per diem fee and mileage, all expense claims must be accompanied by a receipt or they will not be paid. This is the general rule which all offices should follow. If there are "exceptional circumstances" such that a claim should be paid in spite of a lack of a receipt, the Crown Attorney should complete a Form W-2 and attach it to the W-1 Form. The W-2 Form **need not** be approved

by the Chief Crown Attorney when utilized for this purpose. Unless a Form W-2 is attached to a Form W-1, a non-receipted claim will not be paid.

4. The bottom portion of Form W-1 must be completed by the Crown Attorney or his/her office delegate. Some confusion may have resulted in relation to the bottom portion of the Form as a result of a memorandum sent to the Crown offices by the Department of Justice, Financial Services Division. That memo requested a stamp be placed on all W-1 Forms with the identifying code number for your office. The memo indicated that the Crown Attorney could then simply initial the Form

   The stamp with your office code number should continue to be placed on all W-1 Forms sent by your office to the Department of Justice, Financial Services Division. Either a signature or the initials of the Crown Attorney, or his/her office delegate must appear on the W-1 Form. The local office must also complete the line indicating what amount is being approved. I suggest the margins of the Form be used so that the basis of your approved amount can be reviewed by the Manager, Administrative Services, and officials at the Department of Justice. As an example, a recent Form showed: $5.00 fee; $6.20 mil (mileage); $5.75 lunch - in the margins with the total $16.95 shown at the bottom on the line for the amount approved.

FORM W-2

Form W-2 is to be used for a number of situations:

1. When a Crown Attorney wishes to authorize payment of a witness fee in excess of the usual maximums -- in this case, the proposal must be approved by the Chief Crown Attorney.

2. When a Crown Attorney wishes to approve a non-receipted claim -- for this use, Form W-2 need not be approved by the Chief Crown Attorney unless the claim exceeds the usual maximum.

3. When expenses have been billed directly to the Public Prosecution Service -- Form W-2 should be completed and attached to the invoice received by the local office. By way of example, if a witness is staying overnight at a motel and the motel is billing the Service directly, the motel should be advised to send the bill to the local office. (The motel must also be advised what charges to the room we will pay and in particular, the maximum amounts we will pay for meals). When the local office receives the invoice, they should complete a Form W-2 and attach it to the invoice. The documentation should then be sent to the Financial Services Division of the Department of Justice. The W-2 Form **need not** be approved by the Chief Crown Attorney when utilized for this situation.

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- Spousal/Partner Violence Checklist
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CANADA)
PROVINCE OF)

APPLICATION FOR TRANSFER OF CRIMINAL CHARGES PURSUANT TO SECTION 478(3) OF THE CRIMINAL CODE OR SECTION 133 OF THE YOUTH CRIMINAL JUSTICE ACT

NAME: ____

DATE OF BIRTH: Day ________ Month ________ Year __________

ADDRESS: ____

____________________________________ Ph: ____________

TAKE NOTICE that I, ____________ hereby seek the consent of the Attorney General of ____________ to have criminal charges **transferred to** ____________ pursuant to the provisions of Section 478(3) of the *Criminal Code* or Section 133 of the *Youth Criminal Justice Act*. **I hereby signify in writing my consent to plead guilty to the charge(s).**

PARTICULARS OF OUTSTANDING CHARGE(S)

	OFFENCE	PLACE COMMITTED	DATE	ALIAS
1.	________	______________	________	________
	________	______________	________	________
2.	________	______________	________	________
	________	______________	________	________
3.	________	______________	________	________
	________	______________	________	________
4.	________	______________	________	________
	________	______________	________	________

If the applicant is incarcerated, indicate the following:

Date of Incarceration: ____________ Sentence: __________________

Statutory/Early Release Date: ________________

Institution: ____________________________
____

DATED this day of , ____________ A.D., _____ ,at the city/town of ____________ , in the Province/Territory of ____________ .

____
WITNESS

____
APPLICANT'S SIGNATURE

REQUEST TO TRANSFER CHARGES WITHIN NOVA SCOTIA

Name of Accused: ______________________ DOB: ______________

Present Address: ______________________________
____
____

Phone: (res.) __________________ (wk.) __________________

DETAILS OF CHARGE(S) TO BE TRANSFERRED:

LOCATION OF OFFENCE/ POLICE AGENCY	DATE OF OFFENCE	OFFENCE	POLICE FILE NUMBER

NEXT/LAST COURT DATE:
LOCATION OF COURT:
REASON FOR APPEARANCE (Trial, Plea, Sentencing, etc.):
OTHER:

I hereby request the above-noted charge(s) be transferred from ________________, Nova Scotia to ______________________, Nova Scotia. **I have been informed and understand that charges may only be transferred for the purpose of entering a guilty plea.**

______________________________ ACCUSED

______________________________ DATE

______________________________ WITNESS

______________________________ DATE

Crown Inter-Office Request to Obtain a Transfer Order

Office Originating Request:

Accused: ____

Location of Accused: ____________________________________

Crown Attorney Making Request for Transfer Order:________________

Place Where Accused Is Required:____________________________
(Court from which Warrant Issued)

Office Receiving Request:

Person Acknowledging of Receipt of Request:___________________

Date Request Received:___________________________________

PPS File Number: _______________________________________

Place Where Accused Is Required:____________________________
(Court from which Warrant Issued)

Transfer Order will be prepared: Yes ____ No ____

If Transfer Order will not be prepared, please give reason:

____

____

____

Return copy of completed form to originating office

Place copy in prosecution file

NOVA SCOTIA PUBLIC PROSECUTION SERVICE

RECOMMENDATION FOR APPEAL:

G TO THE NOVA SCOTIA COURT OF APPEAL

G TO THE SUPREME COURT OF NOVA SCOTIA

DATE RECEIVED

SERVICE OF NOTICE BY:

PROCEEDINGS: **By Indictment •** **Summary Conviction •**

NATURE OF APPEAL: **Acquittal •** **Stay of Proceedings •** **Sentence •**

OTHER • ____________________

[eg., Parole Eligibility, Prerogative Remedy, Young Offender Transfer Application]

1. Full Name of Accused/Offender:
2. Date of Birth:
3. F.P.S. No.:
4. Last Known Address:
5. Place of Incarceration (if in custody):
6. Place of Proceedings:
7. Judge:
8. Court:
9. Trial Crown Attorney:
10. Defence Counsel:
11. Date of Conviction, Acquittal, Stay of Proceedings, or other order:

12. Date of Sentence:

13. Plea in Trial Court:

14. Precise Details of Sentence Imposed:

15. Recommendation of Crown at Sentencing:

16. Investigating Officer (s) and Police Force:

17. Precise Wording of Charge(s):

18. If a Summary Conviction Appeal to the Nova Scotia Court of Appeal under s.839 of the **Criminal Code** is recommended, identify the judge, crown attorney and defence counsel on appeal, and provide details of the place of the appeal hearing (if any), the result of the appeal, and the date of the appeal court's decision.

19. Reasons for Request:

(**NOTE**: If a sentence appeal is recommended and conviction followed a trial, provide a detailed statement of the undisputed facts of the case if the facts do not form part of the sentencing record.)

20. Any special instructions:

RECOMMENDED:

Crown Attorney ____________________

Date ____________________

APPROVED:

Chief Crown Attorney ____________________

Date ____________________

NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

Recommendation for Referral of File to Head Office

(This form must be completed by the CA recommending the referral of a fraud or sexual assault file to Head Office)
(If space for answers is insufficient use additional paper)

1. **Accused name(s):** ____________________

2. **Investigating Agency:** ____________________ **Investigator:** ____________________

3. **Status:**
   - investigation not complete
   - investigation complete, no charges laid
   - charges laid, arraignment pending date ____________________
   - post arraignment, preliminary pending date(s) ____________________
   - post preliminary, trial pending date(s) ____________________

     judge alone __________ judge and jury__________

NOTE: **(Files should be referred as early in the process as possible. Late recommendations for referral; i.e. after the Preliminary Inquiry will generally NOT be accepted.)**

4. **Reason(s) for Referral**:
   - legal opinion. State issue(s) ____________________

____

   - Head office to assume responsibility for the file.

5. **Synopsis of Case. Provide a brief summary of the facts and if a sexual assault or fraud, complete the appropriate section on the next page.**

____________________ ____________________
Date Crown Attorney

Fax this recommendation to your Chief Crown Attorney. Do not send the file at this time. I agree with the recommendation set out above.

____

Sexual Assault:

- charter issues
  specify: ____________________
- evidence issues
  specify: ____________________
- multiple victims #____________
- very young victims age(s)______
- number of witnesses #_________
- special needs victims
  specify: ____________________
- preparation time required ____day(s)
- estimated length of PI/trial _____day(s)

Fraud:

- charter issues
  specify: ____________________
- evidence issues
  specify: ____________________
- number of exhibits # _________
- number of witnesses # ________
- amount of money $___________
- preparation time required _____day(s)
- estimated length of PI/trial ____day(s)

- other (applies to either fraud or sexual assault ___________________________________

____

Canada
Province of
Nova Scotia

IN THE COURT

Her Majesty the Queen
v.

NS Form___
CC Form 52
Revised 12/04

Order # ______________

Approved

____
Judge

____
D/M/Y

____
(Name of Offender)

ORDER TO COMPLY WITH SEX OFFENDER INFORMATION REGISTRATION ACT

(Section 490.012CC)

To: ______________________________

of ______________________________ D.O.B.______________

You have been convicted of, or found not criminally responsible on account of mental disorder for the offence(s) of:______________________________ ______________________________(Section # and description), designated offence(s) within the meaning of Section 490.011(1) of the *Criminal Code of Canada*.

1. You must report for the first time, in person, to the registration centre that serves the area in which your main residence is located, pursuant to subsection 4(1) and (2) of the *Sex Offender Information Registration Act*. within:
☐ fifteen days of the date of this order; or
☐ within fifteen days of your release from prison; and
you may not leave Canada prior to registration.

The Sex Offender Registration Centre which serves the area in which your main residence is located
☐ is at:______________________________; or
☐ may be located by you by contacting the ______________________ Police at ______________________________.

2. ☐ You must subsequently report to the registration centre that serves the area in which your main residence is located whenever required under section 4.1 or 4.3 of the *Sex Offender Information Registration Act*, for a period of _____years after this order is made; OR,

2. ☐ You must subsequently report to the registration centre that serves the area in which your main residence is located whenever required under section 4.1 or 4.3 of the *Sex Offender Information Registration Act* , for life.

3. Information relating to you will be collected under sections 5 and 6 of the *Sex Offender Information Registration Act* by a person who collects information at the registration centre.

4. Information relating to you will be registered in a database, and may be consulted, disclosed and used in the circumstances set out in the *Sex Offender Information Registration Act*.

5. If you believe that the information registered in the database contains any error or omission, you may ask a person who collects information at the registration centre that serves the area in which your main residence is located to correct the information.

6. You have the right to appeal this order.

7. You have the right to apply to a court to terminate this order, and the right to appeal any decision of that court.

8. If you are found to have contravened this order, you may be subject to a fine or imprisonment, or to both.

9. If you are found to have provided false or misleading information, you may be subject to a fine or imprisonment, or to both.

Dated at ______________________ Nova Scotia on ____________________, 200___.

____
Judge/Clerk of the Provincial Court

Copies: 1. Court 2.Offender 3. Charging Police Service 4.Correctional Institution if custody 5. Review Board if applicable

THE SEX OFFENDER INFORMATION REGISTRATION ACT PROVIDES AS FOLLOWS

Section 4(1) A sex offender shall report, for the first time under this Act, in person to the registration centre that serves the area in which their main residence is located

(2) A person who is subject to an order shall report within 15 days after

(a) the order is made, if they are convicted of the offence in connection with which the order is made but are not given a custodial sentence;

(b) they receive an absolute or conditional discharge under Part XX.1 of the *Criminal Code*, if they are found not criminally responsible on account of mental disorder for the offence in connection with which the order is made;

(c) they are released from custody pending the determination of an appeal relating to the offence in connection with which the order is made;

(d) they are released from custody after serving the custodial portion of a sentence for the offence in connection with which the order is made.

(3) A person who is subject to an obligation under Section 490.019 of the *Criminal Code*, shall report:

(a) if they are not in custody on the day on which they become subject to the obligation, within 15 days after that day; or

(b) in any other case, within 15 days after

(i) they receive an absolute or conditional discharge under Part XX.1 *Criminal Code*,

(ii) they are released from custody pending the determination of an appeal, or

(iii) they are released from custody after serving the custodial portion of a sentence.

(4) A sex offender shall not leave Canada before they report under this section.

Section 4.1 A sex offender shall subsequently report to the registration centre that serves the area in which their main residence is located in person or in accordance with regulations made under paragraph 18(1)(a) or subsection 19(1),

(a) within 15 days after they change their main residence or any secondary residence;

(b) within 15 days after they change their given name or surname; and

(c) at any time between 11 months and one year after they last reported to a registration centre under this Act.

Section 4.2(1) If a person who is subject to an obligation under section 490.019 of the *Criminal Code* becomes subject to an order, they shall report on the reporting dates established under the order only.

Section 4.2(2) A person who is subject to more than one order shall report on the reporting dates established under the most recent order only.

Section 4.3 A sex offender who is outside Canada when they are required to report under section 4.1 shall report not later than 15 days after they return to Canada.

Section 5(1) When a sex offender reports to a registration centre, they shall provide the following information to a person who collects information at the registration centre:

(a) their given name and surname, and every alias that they use;

(b) their date of birth and gender;

(c) the address of their main residence and every secondary residence or, if there is no such address, the location of that place;

(d) the address of every place at which they are employed or retained, or are engaged on a volunteer basis or, if there is no such address, the location of that place;

(e) the address of every educational institutional at which they are enrolled or, if there is no such address, the location of that place;

(f) a telephone number at which they may be reached, if any, for every place referred to in paragraphs (c) and (d), and the number of every mobile telephone or pager in their possession; and

(g) their height and weight and a description of every physical distinguishing mark that they have.

Section 5(2) When a sex offender provides the information referred to in subsection (1), the person who collects the information may ask them when and where they were convicted of, or found not criminally responsible on account of mental disorder for, an offence in connection with which an order was made or, if they are subject to a obligation under section 490.011(1) of the *Criminal Coce*, a designated offence within the meaning of subsection 490.011(1) of that Act.

Section 5(3) When a sex offender reports to a registration centre in person, the person who collects the information referred to in subsection (1) may record any observable characteristic that may assist in identification of the sex offender, including their eye colour, and may require that their photograph be taken.

Section 6(1) A sex offender shall notify a person who collects information at the registration centre that serves the area in which their main residence is located

(a) of every address or location at which they stay or intend to stay, and of their actual or estimated dates of departure from, and return to, their main residence or a secondary residence, not later than 15 days after departure if they are in Canada but are absent from their main residence and every secondary residence for a period of a least 15 consecutive days;

(b) of their actual or estimated date of departure from their main residence or a secondary residence, not later than 15 days after departure if they are outside Canada for a period of at least 15 consecutive days; and

(c) of their actual return to their main residence or a secondary residence after a departure referred to in paragraph (a) or (b), not later than 15 days after they return, unless they are required to report under section 4.1 or 4.3 within that period.

Section 6(2) Notification shall be by registered mail or in accordance with regulations made under paragraph 18(1)(a) or subsection 19(1), but a sex offender may not be required to provide notification in person.

Section 7 A sex offender who is under 18 years of age has the right to have an appropriate adult chosen by them in attendance when they report to a registration centre and when information is collected.

Section 17(1) Every person who knowingly provides false or misleading information under subsection 5(1) or 6(1) is guilty of an offence and liable

(a) in the case of a first offence, on summary conviction, to a fine or not more than $10,000 or to imprisonment for a term of not more than six months, or to both; and

(b) in the case of a second or subsequent offence,

(i) on conviction on indictment, to a fine of not more than $10,000 or to imprisonment for a term of not more than two years, or to both, or

(ii) on summary conviction, to a fine of not more than $10,000 or to imprisonment for a term of not more than six months, or to both.

Section 17(2) Every person who knowingly contravenes any of subsections 16(1) to (5) is guilty of an offence and liable on summary conviction to a fine of not more than $10,000 or to imprisonment for a term of not more than six months, or to both.

THE CRIMINAL CODE PROVIDES AS FOLLOWS:

Section 490.031 Every person who, without reasonable excuse, fails to comply with an order made under section 490.012 or with an obligation under section 490.019, is guilty of an offence and liable

(a) in the case of a first offence, on summary conviction, to a fine of not more than $10,000 or to imprisonment for a term of not more than six months, or to both; and

(b) in the case of a second or subsequent offence,

(i) on conviction on indictment, to a fine of not more than $10,000 or to imprisonment for a term of not more than two years, or to both, or

(ii) on summary conviction, to a fine of not more than $10,000 or to imprisonment for a term of not more than six months, or to both.

ACKNOWLEDGEMENT

I have received a copy of this Order, it has been read to or by me, I have read or have had read to me Sections 4 to 7 and Subsection 17(1) of the *Sex Offender Information Registration Act* and Section 490.031 of the *Criminal Code* and I understand the meaning of this Order and those mentioned sections.

DATED at ______________________________, Nova Scotia on __________________________, 200____.

____
Order served by the above witness

____
Signature of Person subject to this Order

R. v. ____________________________ PPS Office:________________

PPS File No. ______________________

SPOUSAL/PARTNER VIOLENCE - CHECKLIST

ARRAIGNMENT

1. Was the accused brought to court in custody? (If no, go to the next section.) • Y • N

   (a) Was this a case in which it was appropriate to oppose release? • Y • N
   (b) Was the accused remanded in custody? • Y • N

2. If the accused was released, what were the conditions of release?
   (a) no contact with complainant • Y
   • N
   (b) no weapons • Y • N
   (c) other • Y• N

3. How did the Crown Attorney notify the complainant of the release conditions?

   Through the police ____ Through Victims' Services ____ Directly ____

Crown Attorney (initials) ____________

VICTIMS' SERVICES REFERRAL

4. Did the Crown Attorney refer the complainant to the Victims' Services Division of the Department of Justice? • Y • N

5. To your knowledge, did another person or agency refer the complainant to the Victims' services Division? • Y • N

Crown Attorney (initials) ____________

GUILTY PLEA/TRIAL

6. Was the complainant interviewed by the Crown Attorney? • Y • N

7. Was there a recantation by the complainant? • Y • N

   If yes, did the prosecutor

   (a) inquire re the cause of recantation? • Y • N

   (b) advise the complainant of available support services? • Y • N

   (c) instruct the police to take a fresh statement from the complainant? • Y • N

8. Was there a guilty plea? • Y • N

9. If a trial was held, was the accused found guilty? • Y • N

Crown Attorney (initials) ____________

SENTENCING

10. What sentence was recommended by the Crown Attorney?

    Federal ____ Provincial ____ Conditional Sentence ____ Fine ____ Probation ____

11 If probation was imposed, what conditions were recommended?

    Counselling ____ No contact ____ No weapons ____ Other ____

Crown Attorney (initials) ____________

R. v. ______________________________ PPS Office:______________________

PPS File No. _______________________ Date of Discontinuance_____________

NOTICE OF DISCONTINUANCE

(of Spousal/Partner Violence Case)

The decision to discontinue was made by ______________________________ (Crown Attorney).

Prior to the discontinuance, was the Chief Crown Attorney consulted? • Y • N

Was the discontinuance due to insufficient evidence? • Y • N

If yes, was the complainant present at court? • Y • N

If the complainant was not at court, was the complainant subpoenaed? • Y • N

If the complainant was not at court, was an adjournment requested? • Y • N

If the complainant was not at court, was a witness warrant requested? • Y • N

Was recantation by the complainant a factor? • Y • N

Was the case discontinued for public interest considerations? • Y • N

Were the reasons for discontinuance stated on the record in court? • Y • N

Did the accused enter into a peace bond (Criminal Code section 810)? • Y • N

Additional comments of prosecutor re discontinuance:

Comments of Chief Crown Attorney:

Retain one copy for file. Send one copy to Chief Crown Attorney.

UNDERTAKING

RE: R. v. ____________________SECTION ___________ CRIMINAL CODE

I, ______________________________________, counsel for the accused, hereby acknowledge that pursuant to the Crown disclosure requirements set down by the Supreme Court of Canada in **R.** v. **Stinchcombe** and in compliance with s.5(f) of the **Directive of the Minister of Justice and Attorney General of Nova Scotia Regarding Disclosure by the Crown in Criminal Cases** made pursuant to s.6(a) of the **Public Prosecutions Act**, I have received a copy of a videotaped statement given by _______________________________, the complainant in the above-styled prosecution on the __________day of ____________________, 20____.

I hereby undertake that I will abide by the following conditions in my conduct with respect to the videotaped statement until I return same to the ____________________Office of the Crown Attorney at the conclusion of the court proceedings:

1. I will retain in my personal possession the videotaped statement at all times in a secure and private place, save and except the time period during which it is in the possession of an expert witness retained by me, or a person assisting me in the preparation of a transcript of the words spoken on the videotape.

2. I will neither make nor authorize the making of a copy of the videotaped statement, except to facilitate the preparation of a transcript of the words spoken on the videotape.

3. I will allow no one to view the videotaped statement except:

   (i) the accused in this matter, ________________________, when in my presence;

   (ii) an expert witness retained by me;

   (iii) a person assisting me in preparing a transcript of the words spoken on the videotape.

4. At the conclusion of all litigation in this matter, I will return the videotaped statement together with all copies of any transcription or tape of the audio portion of the videotape to the office of the Crown Attorney from which the statement was originally disclosed;

5. If during the course of the conduct of this case, I am no longer counsel for the accused, I will return the videotaped statement, together with all copies of any transcription or tape of the audio portion of the videtape forthwith to the office of the Crown Attorney from which the statement was originally disclosed.

Dated this ___________ day of _____________________, 20_____.

____
COUNSEL FOR THE DEFENCE

FORM W-1

NOVA SCOTIA PUBLIC PROSECUTION SERVICE

WITNESS FEE CLAIM FORM

In order to be reimbursed for expenses incurred for the purpose of attending court as a witness, you must complete this form and submit it to the local Crown Attorneys' office. Please refer to the reverse of this form for details on what expenses will be reimbursed.

NAME OF ACCUSED: ______________________________

DATE(S) YOU ATTENDED COURT: ______________________________

TRAVELLED FROM: ______________________________

DISTANCE TRAVELLED TO ATTEND COURT (return): ______________ **km. or** ______________ **miles**

MODE OF TRAVEL: ***(Please check off mode used)***

Car	________	***Driver (if not you)***		______________
Bus	________	***Fare***	***$***	______________
Train	________	***Fare***	***$***	______________
Airplane	________	***Fare***	***$***	______________

OTHER EXPENSES: (Receipts must be attached)

____

____

I certify that the information given on this form and in any documents attached is correct and complete.

____
Must be signed by Witness Fee Claimant

YOUR FULL NAME AND MAILING ADDRESS: (If possible, attach your subpoena.)

____

____

____

MAIL THIS FORM WITH RECEIPTS (Where available) TO:

DO NOT WRITE IN THIS SECTION

APPROVED FOR PAYMENT IN $ __________ **AMOUNT**

CROWN ATTORNEY ______________________________ **DATE** ______________

WITNESS FEE REIMBURSEMENT

Witnesses are entitled to reimbursement as prescribed by the **Costs and Fees Act** RSNS 1989 c.104 and the regulations made pursuant thereto.

1) For attendance at court, per day . . . . $ 5.00

2) **TRAVEL, (one way)** . . . . $ 0.20/mile OR
. . . . $ 0.125/km.

3) **MEALS**: Receipts must be submitted.

Payment for meals will be the lesser of the amount of the receipt and the government meal allowance:

Breakfast......$ 6.50 Lunch......$ 7.00 Dinner......$ 13.50

4) **ACCOMMODATIONS**:

Overnight accommodations must be pre-approved by the Crown Attorney's office. Normally, the hotel will bill the Public Prosecution Service directly. Where the witness pays the bill and submits a claim for reimbursement, a receipt must be provided. Reimbursement for the room will be at the government rate.

Where meals are charged to the room, the Service will pay for meals at the rate set out above. Other charges for such things as phone calls, alcoholic drinks and in-room movies will not be paid by the Service. Such expenses, if incurred, are the witness's responsibility.

5) **TRAVEL BY MEANS OTHER THAN CAR**.

Travel by means other than car must be pre-approved by the Crown Attorney's office. Normally, the travel cost will be billed directly to the Public Prosecution Service. Where the witness pays the travel cost, a receipt must be submitted. Reimbursement for air travel will be at the lowest economy class rate.

6) **NO REIMBURSEMENT WILL BE MADE FOR EXPENSES OTHER THAN THOSE LISTED ABOVE UNLESS PRE-AUTHORIZED BY A CROWN ATTORNEY ON FORM W-2.**

FORM W-2

NOVA SCOTIA PUBLIC PROSECUTION SERVICE

WITNESS FEE SPECIAL REIMBURSEMENT

This form must be completed by the Crown Attorney with conduct of the case where special arrangements are proposed regarding witness reimbursement.

NAME OF ACCUSED: ______________________________

COURT DATE(s): ______________________________

WITNESS NAME: ______________________________

PROPOSED REIMBURSEMENT: ______________________________

____

REASON FOR PROPOSED ARRANGEMENT:

____

____

____

____

____

I recommend that the arrangement set out above be approved:

____

CROWN ATTORNEY

I approve the special arrangement proposed above.

____

CHIEF CROWN ATTORNEY or DELEGATE

FORM W-3

NOVA SCOTIA PUBLIC PROSECUTION SERVICE
WITNESS FEE
AIR TRANSPORTATION APPROVAL FORM

This form must be completed for any witness where it is proposed to have the witness travel by air to attend court. The Crown Attorney with conduct of the case is responsible for completing and signing this form:

NAME OF ACCUSED: ______________________

NATURE OF CHARGES: ______________________

COURT LOCATION: ______________________

COURT DATE(s): ______________________

WITNESS NAME: ______________________

WITNESS TO TRAVEL FROM: ______________________

PROPOSED DATE(s) OF TRAVEL: (Arrival & Departure) ______________________

ANTICIPATED COST: ______________________

Crown Attorneys should request air transportation approval only where the case is definitely proceeding to a hearing, the witness is essential to the Crown's case and it is in the public interest that the case proceed.

Crown Attorneys shall contact the defence prior to completing Form W-3 to ensure the case is proceeding. This requirement doesn't apply when the accused is unrepresented.

____

CROWN ATTORNEY

____

APPROVED - CHIEF CROWN ATTORNEY or DELEGATE

This form is to be attached to the invoice from the travel agency (or the witness fee claim form where the witness paid the fare and sought re-imbursement) and sent to:

Gordon Brown, Public Prosecution Service, Suite 1125 Maritime Centre, 1505 Barrington Street, Halifax, NS B3J 3K5

FOR INTERNAL (PPS) USE ONLY

CASE BULLETIN

Subject: ______________________________ Date: ______________
NAME OF ACCUSED / PERSON / ENTITY AT CENTRE OF ISSUE

Charge(s) (if any) ____

Next court appearance (date): ____________________ Court:

Facts/background (brief summary):

Issues to be brought to the attention of the DPP/Managers/Communications staff:

Comments, including recommended action to be taken:

Contact person: Name: ____________________

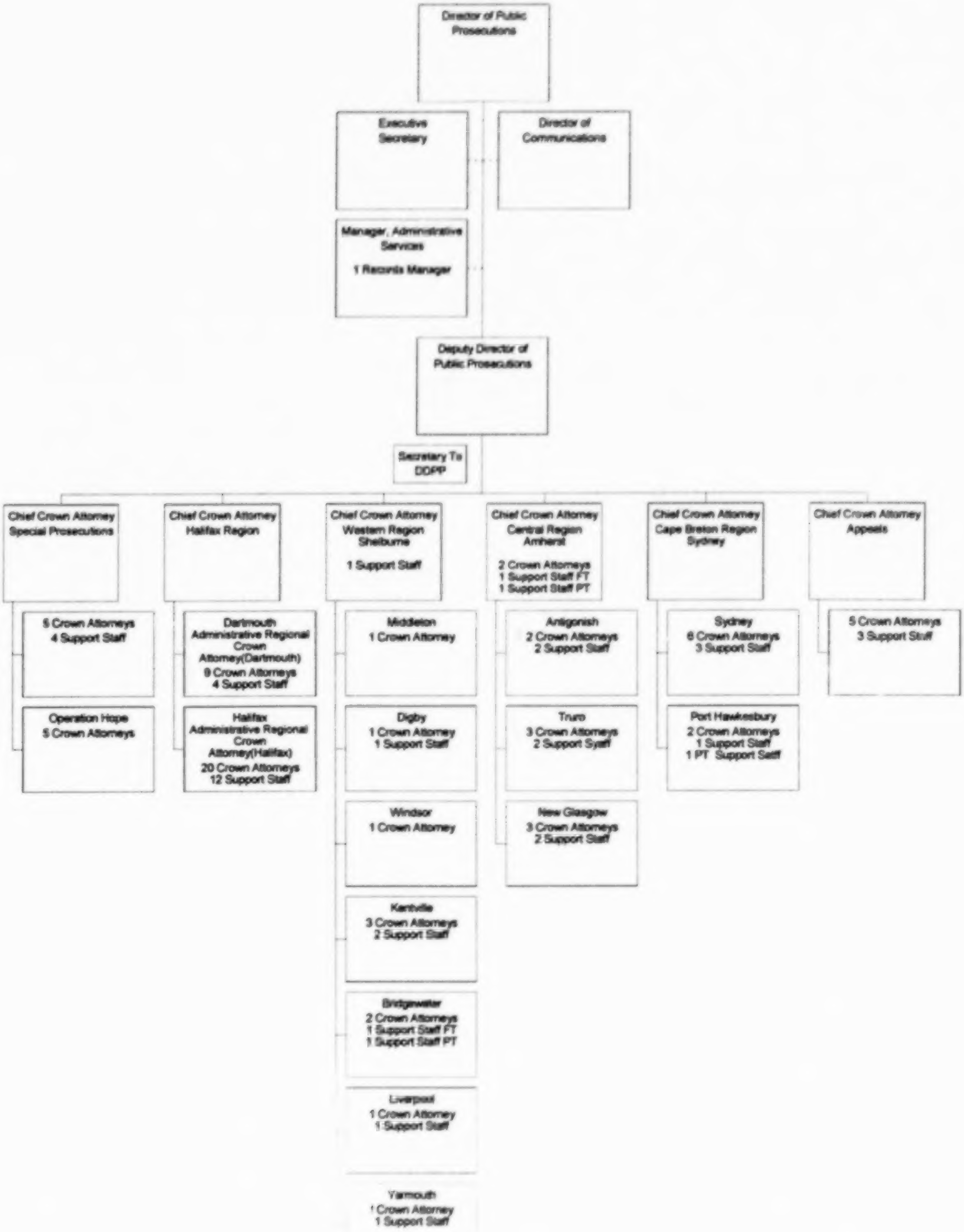
Location: ______________ Telephone: ______________

Cross reference (if any):________________________

Appendix

PPS Organizational Chart

Public Prosecutions Act


Director of Public Prosecutions
Executive Secretary
Director of Communications
Manager, Administrative Services
1 Records Manager
Deputy Director of Public Prosecutions
Secretary To DDPP
Chief Crown Attorney Special Prosecutions
5 Crown Attorneys 4 Support Staff
Operation Hope 5 Crown Attorneys
Chief Crown Attorney Halifax Region
Dartmouth Administrative Regional Crown Attorney(Dartmouth) 9 Crown Attorneys 4 Support Staff
Halifax Administrative Regional Crown Attorney(Halifax) 20 Crown Attorneys 12 Support Staff
Chief Crown Attorney Western Region Shelburne
1 Support Staff
Middleton 1 Crown Attorney
Digby 1 Crown Attorney 1 Support Staff
Windsor 1 Crown Attorney
Kentville 3 Crown Attorneys 2 Support Staff
Bridgewater 2 Crown Attorneys 1 Support Staff FT 1 Support Staff PT
Liverpool 1 Crown Attorney 1 Support Staff
Yarmouth 1 Crown Attorney 1 Support Staff
Chief Crown Attorney Central Region Amherst
2 Crown Attorneys 1 Support Staff FT 1 Support Staff PT
Antigonish 2 Crown Attorneys 2 Support Staff
Truro 3 Crown Attorneys 2 Support Syaff
New Glasgow 3 Crown Attorneys 2 Support Staff
Chief Crown Attorney Cape Breton Region Sydney
Sydney 6 Crown Attorneys 3 Support Staff
Port Hawkesbury 2 Crown Attorneys 1 Support Staff 1 PT Support Saff
Chief Crown Attorney Appeals
5 Crown Attorneys 3 Support Stuff

Public Prosecutions Act

CHAPTER 21

OF THE

ACTS OF 1990

amended 1999 (2nd Sess.), c. 16

NOTE - This electronic version of this statute is provided by the Office of the Legislative Counsel for your convenience and personal use only and may not be copied for the purpose of resale in this or any other form. Formatting of this electronic version may differ from the official, printed version. Where accuracy is critical, please consult official sources.

An Act to Provide for an Independent Director of Public Prosecutions

Short title

1 This Act may be cited as the *Public Prosecutions Act*. 1990, c. 21, s. 1.

Purpose of Act

2 The purpose of this Act is to ensure fair and equal treatment in the prosecution of offences by

(a) establishing the position of Director of Public Prosecutions;

(b) providing for a public prosecution service; and

(c) providing for the independence of the Director of Public Prosecutions and the public prosecution service. 1990, c. 21, s. 2.

Interpretation

3 In this Act, "prosecution" includes the decision whether to prosecute or not, the prosecution proceeding itself and matters arising therefrom, and appeals. 1990, c. 21, s. 3.

Director of Public Prosecutions

4 There shall be a Director of Public Prosecutions who

(a) is the head of the public prosecutions service and is responsible for all prosecutions within the jurisdiction of the Attorney General conducted on behalf of the Crown;

(b) may conduct all prosecutions independently of the Attorney General except that the Director of Public Prosecutions shall comply with all instructions or guidelines issued by the Attorney General in writing and published pursuant to this Act;

(c) is, for the purpose of the *Criminal Code* (Canada) and the *Summary Proceedings Act*, the Attorney Generals lawful deputy in respect of prosecutions;

(d) shall advise police officers in respect of prosecutions generally or in respect of a particular investigation that may lead to a prosecution when the police request such assistance;

(e) may issue general instructions or guidelines to a chief crown attorney, a regional crown attorney or a crown attorney in respect of all prosecutions or a class of prosecutions, and shall cause such instructions or guidelines to be published;

(f) may issue instructions or guidelines to a chief crown attorney, a regional crown attorney or a crown attorney in a particular prosecution. 1990, c. 21, s. 4.

Qualifications and appointment

5 (1) The Director of Public Prosecutions

(a) shall be a barrister of at least ten years standing at the Bar of Nova Scotia or of another province of Canada, and if of another province, shall, within one year of appointment, become a practising member of the Bar of Nova Scotia;

(b) shall be appointed by the Governor in Council after consultation with the Chief Justice of Nova Scotia, the Chief Justice of the Trial Division of the Supreme Court and the Executive of the Nova Scotia Barristers Society;

(c) holds office during good behaviour;

(d) has the status of deputy head and the provisions of the *Civil Service Act* and regulations relating to a deputy or a deputy head apply to the Director of Public Prosecutions; and

(e) shall be paid the same salary as the Chief Judge of the provincial court.

(2) The Director of Public Prosecutions may be removed from office for cause by a resolution of the Assembly.

(3) Where, while the Assembly is not sitting, the Director of Public Prosecutions fails to be of good behaviour, or is unable to perform the duties of office, the Governor in Council may appoint a person to be Acting Director of Public Prosecutions who shall take over the duties of the Director of Public Prosecutions until the Governor in Council sooner rescinds the appointment of the Acting Director of Public Prosecutions.

(4) Where a vacancy occurs in the office of the Director of Public Prosecutions in a manner other than that referred to in subsection (2), the Governor in Council may appoint a person to be Acting Director of Public Prosecutions until a Director of Public Prosecutions is appointed pursuant to this Act. 1990, c. 21, s. 5; 1999 (2nd Sess.), c. 16, s. 1.

Power and duties of Attorney General

6 The Attorney General is the minister responsible for the prosecution service and is accountable to the Assembly for all prosecutions to which this Act applies and

(a) after consultation with the Director of Public Prosecutions, may issue general instructions or guidelines in respect of all prosecutions, or a class of prosecutions, to the prosecution service and shall cause all such instructions or guidelines to be in writing and to be published at the direction of the Director of Public Prosecutions as soon as practicable in the Royal Gazette;

(b) after consultation with the Director of Public Prosecutions, may issue instructions or guidelines in a particular prosecution, and shall cause such instructions or guidelines to be in writing and to be published at the direction of the Director of Public Prosecutions as soon as practicable in the Royal Gazette except where, in the opinion of the Director of Public Prosecutions, publication would not be in the best interests of the administration of justice, in which case the Director of Public Prosecutions, instead, shall publish as much information concerning the instructions or guidelines as the Director of Public Prosecutions considers appropriate in the next annual report of the Director of Public Prosecutions to the Assembly;

(c) may consult with the Director of Public Prosecutions and may provide advice to the Director of Public Prosecutions and, subject to clauses (a) and (b), the Director of Public Prosecutions is not bound by such advice;

(d) may consult with members of the Executive Council regarding general prosecution policy but not regarding a particular prosecution;

(e) may exercise statutory functions with respect to prosecutions, including consenting to a prosecution, preferring an indictment or authorizing a stay of proceedings, after consultation with the Director of Public Prosecutions and shall cause notice of such action to be published at the direction of the Director of Public Prosecutions as soon as practicable in the Royal Gazette. 1990, c. 21, s. 6; 1999 (2nd Sess.), c. 16, s. 2.

Meeting between Attorney General and Director

6A The Attorney General and the Director of Public Prosecutions shall meet at least twelve times a year, on a monthly basis if possible, to discuss policy matters, including existing and contemplated major prosecutions. 1999 (2nd Sess.), c. 16, s. 3.

Extraordinary prosecution

6B (1) In this Section, "extraordinary prosecution" means an unexpected or unforeseen prosecution that cannot be undertaken within the budget appropriated for the public prosecution service but is of such a magnitude and importance that, in the opinion of the Director of Public Prosecutions, the prosecution should be undertaken notwithstanding the lack of financial resources.

(2) The Director of Public Prosecutions may spend in any fiscal year an amount that is not more than five per cent more than the amount appropriated for the public prosecution service for that year for the purpose of undertaking an extraordinary prosecution.

(3) The Governor in Council shall provide the additional funds referred to in subsection (2) through a supplementary appropriation.

(4) Where the Governor in Council has provided the funds referred to in subsection (3) and deems it advisable to conduct a review of the need for the additional funds, the Governor in Council may appoint a qualified person to conduct the review. 1999 (2nd Sess.), c. 16, s. 3.

Deputy Director of Public Prosecutions

7 The Director of Public Prosecutions may, from time to time, designate a barrister in the public service to be Deputy Director of Public Prosecutions who is responsible to the Director of Public Prosecutions and who may exercise all of the powers and authority of the Director of Public Prosecutions and, for that purpose, is a lawful deputy of the

Attorney General. 1990, c. 21, s. 7.

Crown attorneys

8 There shall be crown attorneys to conduct prosecutions and the crown attorneys are responsible to the Director of Public Prosecutions and, where applicable, to a chief crown attorney or a regional crown attorney. 1990, c. 21, s. 8.

Regional crown attorneys

9 There may be a regional crown attorney to supervise crown attorneys within a geographic area determined by the Director of Public Prosecutions, and a regional crown attorney is responsible to the Director of Public Prosecutions. 1990, c. 21, s. 9.

Chief crown attorneys

10 There may be a chief crown attorney to supervise crown attorneys and, where applicable, regional crown attorneys, and a chief crown attorney is responsible to the Director of Public Prosecutions. 1990, c. 21, s. 10.

Powers, authorities and duties

11 A chief crown attorney, a regional crown attorney and a crown attorney have all the powers, authorities and duties provided by the criminal law of Canada for prosecutors, for prosecuting officers or for counsel acting on behalf of the Attorney General. 1990, c. 21, s. 11.

Qualifications

12 All chief crown attorneys, all regional crown attorneys and all full-time crown attorneys shall be barristers appointed pursuant to the *Civil Service Act* upon the recommendation of the Director of Public Prosecutions after a competition. 1990, c. 21, s. 12.

Annual report

13 The Director of Public Prosecutions shall report annually to the Assembly in respect of prosecutions. 1990, c. 21, s. 13.

Appointment of barrister

14 (1) The Director of Public Prosecutions may appoint a barrister to take charge of and conduct a particular prosecution or to take charge of and conduct criminal business to the extent specified in the terms of the appointment.

(2) A barrister appointed pursuant to this Section shall be known and designated as a crown attorney and, when acting within the terms of the appointment, has all the powers and authority of a crown attorney.

(3) The Director of Public Prosecutions may, from time to time, vary the terms of appointment of a crown attorney pursuant to this Section or may, at any time, revoke the appointment. 1990, c. 21, s. 14.

Existing prosecuting officers

15 Notwithstanding Section 12, all prosecuting officers and assistant prosecuting officers employed by the Province immediately before the coming into force of this Act are crown attorneys for the purpose of this Act. 1990, c. 21, s. 15.

House of Assembly Act amended

16 Clause (c) of subsection (1) of Section 30 of Chapter 210 of the Revised Statutes, 1989, the *House of Assembly Act*, is amended by striking out the punctuation and words ", prosecuting officer" in the second and third lines thereof. 1990, c. 21, s. 16.

Repeal of Prosecuting Officers Act

17 Chapter 362 of the Revised Statutes, 1989, the *Prosecuting Officers Act*, is repealed. 1990, c. 21, s. 17.

Proclamation

18 This Act comes into force on and not before such day as the Governor in Council orders and declares by proclamation. 1990, c. 21, s. 18.

Proclaimed - July 24, 1990

In force - September 1, 1990

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